

1980

## c 230 Land Titles Act

Ontario

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## CHAPTER 230

### Land Titles Act

#### PART I

##### PRELIMINARY

#### 1. In this Act,

Interpre-  
tation

- (a) “court”, except where the context otherwise requires, means the High Court;
- (b) “land registrar” means a land registrar appointed under section 5 in whose office the land affected or intended to be affected by any proceeding, instrument or document is or may be registered;
- (c) “lot” includes a block, reserve and any other delineation of land on a plan;
- (d) “Minister” means the Minister of Consumer and Commercial Relations;
- (e) “owner” means an owner in fee simple;
- (f) “plan” means a plan that is drawn in accordance with the regulations;
- (g) “prescribed” means prescribed by this Act or by the regulations;
- (h) “registered” means registered under this Act;
- (i) “regulations” means the regulations made under this Act and section 97 of the *Registry Act*. R.S.O. 1970, c. 234, s. 1; 1972, c. 1, s. 43 (1); 1972, c. 132, s. 1; 1979, c. 93, ss. 1, 51, *revised*. R.S.O. 1980, c. 445

2. The Minister is responsible for the administration of this Act. R.S.O. 1970, c. 234, s. 2; 1972, c. 1, s. 43 (2). Administra-  
tion of Act

## PART II

## ORGANIZATION AND ADMINISTRATION

## APPLICATION OF ACT

Application  
of Act

**3.—**(1) This Act applies to such parts of the Province as are designated by regulation.

Regulations

- (2) The Lieutenant Governor in Council may by regulation,
- (a) designate the parts of the Province to which this Act applies;
  - (b) describe the land titles divisions; and
  - (c) provide for the location of offices for the land titles system. 1979, c. 93, s. 2.

Changes in  
land titles  
divisions

**4.—**(1) The Lieutenant Governor in Council may, by regulation,

- (a) combine two land titles divisions into one land titles division;
- (b) divide a land titles division into two or more land titles divisions;
- (c) annex a part of a land titles division to an adjoining land titles division;
- (d) designate the names by which land titles divisions shall be known;
- (e) provide for the transfer of records and documents relating to land in a land titles division that is combined, divided or in part annexed by a regulation under clause (a), (b) or (c).

Idem

(2) No alteration in the boundaries of any riding, electoral district or municipality alters or affects the boundaries of any land titles division. 1972, c. 132, s. 3.

Appointment  
of land  
registrars

**5.—**(1) There shall be a land registrar for every land titles division who shall be appointed by the Lieutenant Governor in Council. 1972, c. 132, s. 4 (1), *part*.

Land registrars  
and deputy  
land registrars

(2) There shall be at least one deputy land registrar for every land titles division, and, where there is more than one deputy land registrar for a land titles division, one of the deputies shall be designated as the senior deputy land registrar.

(3) The deputy land registrars and such other employees as are considered necessary for the administration of this Act shall be appointed under the *Public Service Act*. 1979, c. 93, s. 3. Appointments under R.S.O. 1980, c. 418

(4) A deputy land registrar appointed under the *Public Service Act* shall act under the direction of the land registrar and when so acting may exercise the powers and perform the duties of a land registrar. Powers and duties of deputy land registrars

(5) A land registrar may appoint one or more assistant deputy land registrars who may exercise such of the powers and perform such of the duties of the land registrar in respect of his land titles division as are specified in writing by the land registrar. 1980, c. 49, s. 1. Assistant deputy land registrars

6.—(1) Every land titles office, including every combined registry office and land titles office, shall be known as a land registry office. Land registry offices

(2) The system of registration under this Act shall be known as the land titles system. 1972, c. 132, s. 4 (1), *part*. Land titles system

7. Upon receiving an instrument for registration or deposit, the land registrar shall record it and the fee charged in a fee and receiving book in the form approved by the Director of Land Registration. 1979, c. 93, s. 5. Recording in fee and receiving book

#### OFFICERS, ETC.

8. The Director of Land Registration appointed under the *Registry Act* has general supervision and control over land registry offices for land titles divisions and the system for registration therein and, subject to this Act and the regulations, has similar powers and duties as he has under section 91 of the *Registry Act*, and such other duties as he is required to perform by the Lieutenant Governor in Council. R.S.O. 1970, c. 234, s. 10; 1972, c. 132, s. 5. Duties of Director of Land Registration R.S.O. 1980, c. 445

9.—(1) The Lieutenant Governor in Council may appoint a person who is a barrister and solicitor to be the Director of Titles. Director of Titles

(2) The Director of Titles may appoint one or more persons each of whom is a barrister and solicitor to be a Deputy Director of Titles. Deputy Directors of Titles

(3) Where the Director of Titles has appointed more than one deputy under this section, he shall designate one of the deputies as the Senior Deputy Director of Titles. Senior Deputy Director

(4) A Deputy Director of Titles appointed under this section has and may exercise such powers and perform such duties of the Powers and duties

Director of Titles under this or any other Act as are required by the Director of Titles.

Idem

(5) Where the office of Director of Titles becomes vacant,

(a) the Deputy Director of Titles; or

(b) if there is more than one Deputy Director of Titles, the Senior Deputy Director of Titles,

may exercise the powers and shall perform the duties of the Director of Titles until a Director of Titles is appointed. 1979, c. 93, s. 6 (1).

Duties of  
Director  
of Titles

**10.**—(1) The Director of Titles shall supervise and determine all matters relating to titles of land to which this Act applies.

Seal

(2) The Director of Titles shall have a seal of office in such form as the Lieutenant Governor in Council approves.

Hearing  
before  
Director

(3) Where under this Act the land registrar is authorized to hear and determine any matter, the matter may be determined by the Director of Titles at a hearing upon the request or consent of the land registrar.

Place for  
hearing

(4) A hearing before the Director of Titles under subsection (3) may be held at the local land registry office or at the office of the Director of Titles, regard being had to the circumstances of the case.

Notices  
of hearing

(5) Notices of a hearing to be held by the Director of Titles may be served or caused to be served by the Director of Titles or by the land registrar.

Authority of  
Director,  
Deputy  
Director,  
etc.

(6) Any action or duty authorized or prescribed by this Act to be performed by a land registrar may, in the absence of or with the consent of the land registrar, be performed by the Director of Titles, the Deputy Director of Titles or by an assistant Deputy Director of Titles, if so authorized by the Director of Titles.

Registration  
of order of  
Director

(7) Any order of the Director of Titles shall, upon his request, be registered, without fee, by the land registrar, who shall make such entries in or amendments to the register of the title of the land affected by the order as may be required by the Director in his order. R.S.O. 1970, c. 234, s. 12 (1-7); 1979, c. 93, s. 51.

First  
registration

(8) The Director of Titles shall perform such of the functions of a land registrar relating to the first registration of land under this Act as are prescribed. 1979, c. 93, s. 7.

Disputes as  
to fees

**11.**—(1) Where a dispute arises in regard to any question of fees under this Act, the land registrar shall forthwith submit the

dispute to the Director of Land Registration, and shall thereupon notify the person interested or his agent of such submission, and the decision of the Director of Land Registration upon the question submitted is final, unless appealed from and varied upon appeal as hereinafter mentioned.

(2) Where, in the opinion of the Director of Land Registration, a fee payable under this Act is unduly excessive, having regard to all the circumstances, the Director of Land Registration may reduce the fee to such amount as he considers appropriate.

Reduction  
of fees

(3) All decisions given by the Director of Land Registration shall be in writing and the appeal therefrom shall be to the Divisional Court in accordance with the rules of court. 1972, c. 132, s. 8 (1), *part*; 1979, c. 93, s. 51, *revised*.

Decisions of  
Director  
of Land  
Registration

**12.—**(1) Where the office of land registrar becomes vacant,

Temporary  
land registrar

(a) the deputy land registrar; or

(b) if there is more than one deputy land registrar, the senior deputy land registrar; or

(c) if there is no deputy land registrar, a person employed in a land titles office and designated by the Director of Land Registration,

may exercise the powers and shall perform the duties of the land registrar until a land registrar is appointed.

(2) The Director of Land Registration may appoint a person to act as a deputy land registrar in a land registry office for a land titles division, who shall be deemed to be the deputy land registrar therein during such period as the Director of Land Registration may designate. 1972, c. 132, s. 8 (1), *part*; 1979, c. 93, s. 51.

Deputy  
land registrar  
at large

**13.—**(1) There shall be an examiner of surveys who shall be appointed by the Lieutenant Governor in Council.

Examiner  
of surveys

(2) A person shall not be appointed as examiner of surveys unless he is an Ontario land surveyor of not less than five years standing.

Qualifica-  
tions

(3) The examiner of surveys shall work under the direction of the Director of Land Registration and shall perform such duties under this Act, the *Boundaries Act*, the *Certification of Titles Act*, the *Condominium Act* and the *Registry Act* as are required by the Director of Land Registration or prescribed by the Lieutenant Governor in Council. 1972, c. 132, s. 8 (1), *part*.

Duties

R.S.O. 1980,  
cc. 47, 61,  
84, 445

Assistant  
examiners  
of surveys

(4) The examiner of surveys may appoint one or more persons to be assistant examiners of surveys. 1972, c. 132, s. 8 (1), *part*; 1979, c. 93, s. 9.

Duties

(5) An assistant examiner of surveys shall perform such duties of the examiner of surveys under this or any other Act as are required by the examiner of surveys. 1972, c. 132, s. 8 (1), *part*.

Deputy  
Directors of  
Titles for  
R.S.O. 1980,  
c. 47

**14.** The Director of Titles may appoint one or more persons each of whom is an Ontario land surveyor to be a Deputy Director of Titles for purposes of exercising the powers and performing the duties of the Director of Titles under the *Boundaries Act*. 1979, c. 93, s. 10.

Oath of  
office

**15.** Every land registrar, before he enters upon the duties of his office, shall take and subscribe an oath in the prescribed form which shall be transmitted by him to the Director of Land Registration. 1979, c. 93, s. 11, *part*.

Protection of  
officers,  
etc.

**16.**—(1) No officer appointed under this Act and no person acting under his authority or under an order of a court or a rule is liable to any action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in the exercise or supposed exercise of the powers conferred by this Act or of any such order or rule. R.S.O. 1970, c. 234, s. 19.

Liability  
of Crown  
R.S.O. 1980,  
c. 393

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person referred to in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in like manner as if subsection (1) had not been enacted. 1979, c. 93, s. 12.

Seal of  
office

**17.** There shall be a seal for every land registry office for a land titles division. R.S.O. 1970, c. 234, s. 20.

Holiday  
defined

**18.**—(1) In this section, "holiday" means,

(a) Saturday;

(b) Sunday;

(c) a day that is a holiday for civil servants as prescribed by the regulations under the *Public Service Act*. 1972, c. 132, s. 9.

R.S.O. 1980,  
c. 418

Office  
hours

(2) Except on holidays when they shall be closed, every land registry office shall be kept open during such hours as are pre-

scribed and no instrument shall be received for registration except within such hours as are prescribed. 1979, c. 93, s. 13.

#### AUTHORITY OF OFFICERS

**19.**—(1) The Director of Titles or land registrar in an application made to him may act upon depositions or examinations taken before any of the special examiners appointed by the court, who may administer the requisite oath to any person whose deposition or cross-examination the Director of Titles or land registrar has requested such examiner to take, and any such deposition or examination may be taken in shorthand, and any *viva voce* evidence given before the Director of Titles or land registrar may be taken down by a sworn shorthand writer if the examining party so desires.

Depositions  
taken before  
special  
examiners

(2) The Director of Titles or land registrar may name the witnesses to be examined or he may request the examiner to take the examination of all witnesses produced by any named person or of any class of witnesses. R.S.O. 1970, c. 234, s. 22; 1979, c. 93, s. 51.

Directions  
to examiner

**20.**—(1) The Director of Titles or land registrar, by summons under the seal of his office, may require the attendance of all such persons as he thinks fit in an application made to him and may in the summons require any person to produce for inspection any document, deed, instrument or evidence of title to the production of which the applicant or a trustee for him is entitled.

Power to  
summon  
witnesses

(2) He may also, by a like summons, require any person having the custody of any map, plan or book made or kept in pursuance of any statute to produce such map, plan or book for his inspection.

To require  
production  
of plans,  
books, etc.

(3) He may examine upon oath any person appearing before him, and he may allow to every person summoned by him reasonable charges for his attendance.

Examination  
on oath

(4) Any charges allowed by the Director of Titles or the land registrar under this section shall be deemed to be charges incurred in or about proceedings for registration of land and may be dealt with accordingly.

Charges,  
etc.

(5) If any person disobeys an order of the Director of Titles or land registrar made under this section, the Director of Titles or land registrar may certify such disobedience to the court, and thereupon such person may be punished by the court in the same manner as if the order were the order of the court.

Dis-  
obedience  
of orders



Non-attendance or refusal to answer questions

(6) If any person, after the delivery to him of the summons or of a copy thereof, wilfully neglects or refuses to attend in pursuance of the summons or to produce any map, deed, instrument, evidence of title, plan, book or other document or to answer upon oath or otherwise such questions as may be lawfully put to him by the Director of Titles or land registrar, he is guilty of an offence and on conviction is liable to a fine of not more than \$50.

Tender of conduct money and fees

(7) No person shall be required to attend in obedience to a summons or to produce documents unless the fees and allowances for his attendance in accordance with the tariff of the court are paid or tendered to him. R.S.O. 1970, c. 234, s. 23; 1979, c. 93, s. 51.

Director of Titles or land registrar may state a case for opinion of Divisional Court, or direct issue

**21.**—(1) Where upon the examination of a title or upon an application with respect to registered land the Director of Titles or the land registrar entertains a doubt as to any matter of law, he may state a case for the opinion of the Divisional Court and may name the parties to it, and where he entertains a doubt as to any matter of fact, he may direct an issue to be tried for the purpose of determining such fact.

Exercise of powers

(2) The powers conferred by this section shall not be exercised by a land registrar except with the approval of the Director of Titles. R.S.O. 1970, c. 234, s. 24; 1979, c. 93, s. 51.

Administration of oaths

R.S.O. 1980, c. 445

**22.** The land registrar, or any officer in his office authorized by him in writing, or any person authorized for a like purpose under the *Registry Act*, may administer an oath for any of the purposes of this Act. R.S.O. 1970, c. 234, s. 25; 1979, c. 93, s. 51.

Inhibiting of registered dealings

**23.**—(1) The court, the Director of Titles or the land registrar, upon the application of any person interested made in the prescribed manner in relation to any registered land or charge, after directing such inquiries, if any, to be made and notices given and after hearing such persons as the court, the Director of Titles or the land registrar considers necessary or expedient, may issue an order or make an entry inhibiting for a time or until the occurrence of an event to be named in such order or entry or generally until further order or entry any dealing with registered land or with a registered charge.

Terms, etc.

(2) The court, the Director of Titles or the land registrar of his own accord and without notice, may make an order or an entry under subsection (1) and may impose any terms or conditions that are considered just, and may discharge the order or cancel the entry, with or without costs, and generally act in such manner as the justice of the case requires. R.S.O. 1970, c. 234, s. 26; 1979, c. 93, s. 51.

## PART III

## JURISDICTION OF THE COURT

**24.—**(1) Any jurisdiction of the court under this Act, other than an appeal to which section 17 of the *Judicature Act* applies, may be exercised by a judge of the court. Exercise of jurisdiction R.S.O. 1980, c. 223

(2) The court, on any application or in any other matter or proceeding coming before it under this Act, has the like authority in respect of costs as it has in any ordinary proceeding within its jurisdiction. R.S.O. 1970, c. 234, s. 27, *revised*. Costs

**25.—**(1) Officers appointed under this Act shall obey the order of any competent court in relation to registered land on being served with the order or a certified copy thereof. Court order to be obeyed

(2) Where under an order of the court freehold or leasehold land or a charge is vested in any person, the land registrar shall, on due proof of the order, make such entries in the register as are necessary to give effect thereto, but, if any person whose estate is affected by the order is not shown by the order to be a party to the cause or matter in which the order was made, the applicant shall furnish such evidence as is requisite to show that he is bound thereby. R.S.O. 1970, c. 234, s. 28; 1979, c. 93, s. 51. Registration under vesting order

**26.—**(1) Where a hearing has been held under this Act, the decision or order of the Director of Land Registration, Director of Titles or of the land registrar may be appealed to a judge of the county or district court of the county or judicial district in which the land to which the decision or order relates is situate or of such other county or judicial district as the parties agree to, and the appeal shall be by trial *de novo*. Right to appeal

(2) An appeal lies from a decision of a judge of a county or district court under subsection (1) to the Divisional Court. 1979, c. 93, s. 14. Appeal to Divisional Court

**27.** Any person affected by an order made under this Act by a judge of the court may appeal to the Divisional Court within the prescribed time and, subject to the rules, in like manner as in the case of other appeals to that court. R.S.O. 1970, c. 234, s. 30. Appeal

**28.—**(1) Where a minor, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada or person yet unborn is interested in land in respect of the title to which a question arises, any person interested in the land may apply to the Divisional Court for a direction that the opinion of the court in the case stated to it under this Act shall be conclusively binding on the minor, mentally defective person, mentally Where persons absent, unborn or under disability interested

incompetent person, person of unsound mind, person absent from Canada or unborn person.

Powers of  
court on  
stated case

(2) The Divisional Court shall hear the allegations of all parties appearing before it and may disapprove altogether or may approve, either with or without modification, of the directions of the Director of Titles or of the land registrar in respect of any case stated as to the title of land.

Power to  
appoint  
guardian,  
etc.

(3) The Divisional Court may also, if necessary, appoint a guardian or other person to appear on behalf of a minor, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada or unborn person.

Order where  
persons  
absent,  
unborn or  
under  
disability

(4) The Divisional Court, if satisfied that the interests of the person under disability, absent or unborn will be sufficiently represented in any case, shall make an order declaring that all persons, with the exceptions, if any, named in the order, are to be conclusively bound, and thereupon all persons, with such exceptions, are conclusively bound by the decision of the court. R.S.O. 1970, c. 234, s. 31; 1979, c. 93, s. 51.

Power of  
court in  
action for  
specific  
performance

**29.—**(1) Where an action is instituted for the specific performance of a contract relating to registered land or a registered charge, the court having cognizance of the action may by such mode as it considers expedient cause all or any persons who have registered estates or rights in the land or charge, or have entered notices, cautions or inhibitions against the same, to appear in the action and show cause why the contract should not be specifically performed, and the court may direct that an order made by the court in the action is binding on such persons or any of them.

Costs in  
action for  
specific  
performance

(2) All costs awarded to a person so appearing may, if the court so orders, be taxed as between solicitor and client. R.S.O. 1970, c. 234, s. 32.

## PART IV

### APPLICATION FOR FIRST REGISTRATION

#### APPLICANTS

Application  
for  
registration

**30.—**(1) A person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether or not subject to encumbrances, or a person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether or not subject to encumbrances, may apply to the land registrar to be registered under this Act or to have registered in his stead any nominee as owner of the land with an absolute, qualified or possessory title, as the case may be.

(2) A person who has contracted to buy for his own benefit an estate in fee simple in land, whether or not subject to encumbrances, may also apply if the vendor consents to the application. Application by purchaser

(3) A person holding land on trust for sale and a trustee, mortgagee or other person having a power of selling land may authorize the purchaser to make an application to be registered as owner with any title with which an owner is authorized to be registered, and may consent to the performance of the contract being conditional on his being so registered, or such a person, except a mortgagee, may himself apply to be registered as owner with the consent of the persons, if any, whose consent is required to the exercise by the applicant of his trust or power of sale. Application by or authorized by trustee, etc.

(4) A mortgagee having a power of selling land may apply to have the mortgagor or other person owning the equity of redemption registered as owner with any such title. Application by a mortgagee with a power of sale

(5) Subject to subsection 44 (4) and to section 45, the land registrar may, upon an application made by or on behalf of any minister of the government of Canada or Ontario, register under this Act any land claimed to be owned by Her Majesty the Queen in right of Canada or Ontario, as the case may be, notwithstanding that the land had not previously been granted by the Crown. R.S.O. 1970, c. 234, s. 33; 1979, c. 93, s. 51. Registration of Crown as owner

**31.**—(1) The council of any municipality to which this Act applies may by by-law authorize an application to be made to the land registrar to have any land that is within the municipality registered under this Act. Application by municipal council

(2) For the purpose of an application under subsection (1), the municipality shall be deemed to be the agent of the owners and other persons having an interest in the land designated in the by-law and it is not necessary to obtain the consent of such owners and other persons to the application. No consent required

(3) The costs of and incidental to an application under subsection (1) shall be borne and paid by the municipality making the application and the municipality may recover the same by levy of a special rate of assessment on all parcels included in the application or in the municipality. R.S.O. 1970, c. 234, s. 34 (1-3); 1979, c. 93, s. 51. Costs

(4) The land registrar shall not proceed with an application under this section without the consent of the Director of Titles. Consent of Director

(5) The Lieutenant Governor in Council may determine the amount of fees to be paid to the land registrar and to the Director of Titles on an application under this section. Registration fees

Fee for certificate as to excursions  
R.S.O. 1980, cc. 470, 223.

(6) Notwithstanding section 11 of the *Sheriffs Act* or the rules under the *Judicature Act*, the Director of Land Registration may determine the fee payable to a sheriff for a certificate as to executions in connection with an application under this section. R.S.O. 1970, c. 234, s. 34 (6-8); 1979, c. 93, s. 51.

Application by Minister where land not in a municipality

(7) The Minister may apply under this section as agent of the owners and other persons having interests in any land designated by him that is not within a municipality, and subsections (2), (3), (5) and (6) apply with necessary modifications. R.S.O. 1970, c. 234, s. 34 (9); 1972, c. 1, s. 43 (2).

Land registrar's power to register land to which  
R.S.O. 1980, c. 445 applies

**32.**—(1) A land registrar, with the concurrence of the Director of Titles, may, subject to the regulations, register under this Act any land in his land titles division to which the *Registry Act* applies, including land owned by Her Majesty the Queen in right of Canada or Ontario in respect of which evidence of such ownership has been registered under the *Registry Act*.

Discretion of land registrar re quality of title

(2) A parcel of land may be registered under this section with an absolute, possessory, qualified or leasehold title, according to the circumstances, as appears most appropriate to the land registrar.

Title may be qualified as to location and extent

(3) A parcel of land may be registered under this section with a title qualified as to the location of the boundaries and the extent of the parcel.

Regulations re notices, etc.

(4) The Lieutenant Governor in Council may make regulations governing the registration of land under subsection (1), and matters relating thereto, including the notices to be given to owners and encumbrancers. 1972, c. 132, s. 10; 1979, c. 93, s. 51.

Registration of Crown grant  
R.S.O. 1980, c. 413

**33.**—(1) A land registrar shall register a Crown grant received by him under section 36 of the *Public Lands Act* that meets the requirements for registration set out in this Act and the regulations. 1979, c. 93, s. 16.

Where notice of caution or adverse claim unnecessary

(2) It is not necessary to issue a notice in respect of a caution or adverse claim that has been lodged if, by the certificate of the Minister or Deputy Minister of Natural Resources, it appears that the claim in respect of which the caution or adverse claim was lodged was considered by the Minister and disposed of before the issue of the patent, and, if before the receipt of such a certificate any proceedings have been taken by a land registrar in respect of the caution or adverse claim, he shall thereupon discontinue the proceedings and disallow any objection or claim founded thereon and make such order as to costs as he considers just. R.S.O. 1970, c. 234, s. 35 (2); 1972, c. 4, s. 12; 1979, c. 93, s. 51.

Action by land registrar

(3) Where there is no contest as to the rights of the parties, the land registrar may make the requisite entry and issue his certifi-

cate, but, in case of a contest, he shall transmit the papers to the Director of Titles before registering the patentee as owner, and shall otherwise proceed as provided in section 45.

(4) Where the cautioner consents to the registration of the patentee, the land registrar need not issue a notice on account of the caution. Where cautioner consents

(5) Notwithstanding subsection 39 (1), letters patent from the Crown demising land or mining rights for a term of years, or for any greater estate, granted on or after the 31st day of December, 1887, shall be deemed to have been and to be within this section. Registration of Crown lease-patents, etc. R.S.O. 1970, c. 234, s. 35 (3-5); 1979, c. 93, s. 51.

**34.** Where land patented by the Government of Canada has not been registered under this Act or the *Registry Act* and the patentee applies for registration within five years after the date of the patent, the land registrar has authority to register the patentee as owner of the land without submitting his finding upon the application to the Director of Titles for his concurrence. Registration of federal patentees 1979, c. 93, s. 17. R.S.O. 1980, c. 445

**35.—(1)** Upon an entry of ownership being made, the land registrar, unless the land is free grant or otherwise exempt from execution, shall, in the prescribed form, notify the sheriff in whose bailiwick the land lies of the entry of the patentee as owner. Notice by land registrar to sheriff R.S.O. 1970, c. 234, s. 37 (1); 1979, c. 93, s. 51.

(2) No entry of any dealing with the land shall be made in the register until fourteen days after the notice is given, unless proof is previously made that the land is not liable to any execution. After what time entries may be made in register 1972, c. 132, s. 12.

(3) Upon receipt of the notice, the sheriff shall forthwith transmit to the land registrar a copy of any execution in his hands affecting the land of the patentee, and, if within the fourteen days no copy of an execution against the land of the patentee is received from the sheriff, the land registrar may assume that the land is not subject to any execution and may enter subsequent dealings with the land accordingly, and as against such entry no claim shall afterwards be sustained in respect of an execution against the patentee. Action of sheriff and land registrar after notice

(4) Where the land registrar receives from the sheriff a copy of an execution affecting the land, an entry thereof shall be made against the land by the land registrar and all dealings with it are subject to the execution. Entry where copy of execution received R.S.O. 1970, c. 234, s. 37 (3, 4); 1979, c. 93, s. 51.

## TITLES

Evidence  
where absolute  
title required

**36.** Where an absolute title is required, the applicant or his nominee shall not be registered as owner of the fee simple until the title is approved by the Director of Titles. R.S.O. 1970, c. 234, s. 39.

Possessory  
title may be  
registered

**37.**—(1) Where on an application for first registration it appears that the applicant is so entitled by virtue of length of possession of the land, he may be registered as the owner of the land with a possessory title.

Absolute  
title based on  
possession

(2) Subject to the approval of the Director of Titles, an applicant for first registration whose claim to ownership is based upon length of possession of the land may be registered as the owner in fee simple with an absolute title of the land. R.S.O. 1970, c. 234, s. 40.

A qualified  
title may be  
registered

**38.**—(1) Where on the examination of the title it appears to the land registrar that it can be established only for a limited period or subject to certain reservations, the land registrar, on the application of the party applying to be registered, may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register.

Qualified  
title

(2) A title registered subject to such excepted estate, right or interest shall be called a qualified title. R.S.O. 1970; c. 234, s. 41; 1979, c. 93, s. 51.

Register of  
leasehold  
land

**39.**—(1) A separate register of leasehold land shall be kept and,

- (a) any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which at least twenty-one are unexpired, or in respect of which the lessee or his assigns is or are entitled to a renewal term or succession of terms amounting with the part unexpired of the current term to at least twenty-one years, or to a renewal for a life or lives, whether or not subject to encumbrances;
- (b) any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease whether or not subject to encumbrances; or
- (c) any person capable of disposing for his own benefit by way of sale or leasehold land held under any such lease whether or not subject to encumbrances,

may apply to the land registrar to be registered or to have registered in his stead any nominee as owner of such leasehold land, with the addition, where the lease under which the land is held is derived immediately out of freehold land and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held, if, in the case of leasehold land contracted to be bought, the vendor consents to the application.

(2) Every applicant for registration of leasehold land shall deposit with the land registrar the lease in respect of which the application is made or, if the lease is proved to the satisfaction of the land registrar to be lost, a copy of the lease or of a counterpart thereof, verified to the satisfaction of the land registrar, and such lease or verified copy is in this Act referred to as the registered lease.

Registered  
lease

(3) Leasehold land held under a lease containing an absolute prohibition against alienation shall not be registered.

Where lease  
contains  
prohibition  
against  
alienation

(4) Leasehold land held under a lease containing a prohibition against alienation, without the licence of some other person, shall not be registered until provision is made in the prescribed manner for preventing alienation, without such licence by entry in the register of a restriction to that effect.

Where  
alienation  
permitted by  
licence

(5) Section 30 applies to leasehold as well as to freehold land.

s. 30 to  
apply to  
leasehold  
land

(6) A person may apply for registration of a leasehold interest under this section where the freehold title out of which his interest is derived is registered under this Act.

Leasehold  
interests

(7) An applicant or his nominee shall not be registered as owner of leasehold land until the title to the land is approved by the land registrar and, if he applies to be registered as owner of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held, shall not be registered with the declaration until the lessor, after an examination of his title by the land registrar, is declared to have had an absolute or qualified title to grant the lease under which the land is held. R.S.O. 1970, c. 234, s. 42; 1979, c. 93, s. 51.

Evidence  
of title  
required on  
application

#### EASEMENTS AND MINING RIGHTS

**40.—**(1) The land registrar may register the owner of,

Registration  
of easements,  
mining rights

(a) any incorporeal hereditament of freehold tenure enjoyed in gross; or



- (b) any mines or minerals where the ownership of the same has been severed from the ownership of the land,

in the same manner and with the same incidents in and with which he is by this Act empowered to register the owner of land, or as near thereto as circumstances admit.

Registration of easements when dominant land registered

(2) Where an easement in or over unregistered land is granted as appurtenant to registered land, the land registrar, after such examination as he considers necessary, may enter the easement in the register of the dominant land with a declaration that the title thereto is absolute, qualified or possessory, or otherwise as the case requires, and shall cause to be registered in the proper registry division a certificate of such entry.

Certificate of easement when dominant land unregistered

(3) Where an easement in or over registered land is granted as appurtenant to unregistered land, the land registrar may issue a certificate setting out the easement and the land to which it is appurtenant, which may be registered in the registry division in which the land is situate, and he shall note on the register that such certificate has been issued.

Notice of easement

(4) Where the existence of an easement is proved, the land registrar may, if he thinks fit, enter notice thereof on the register.

Statement of appurtenant easement on certificate, etc.

(5) Where title is shown to an easement appurtenant to land being registered, the facts may be stated in the entry and certificate of ownership. R.S.O. 1970, c. 234, s. 43; 1979, c. 93, s. 51.

Easement created by condominium declaration

**41.**—(1) Where the first registered description of an easement is that contained in a condominium declaration and description, and the easement is expressly intended,

- (a) to be an easement through the common elements and to benefit other land owned by the declarant; or
- (b) to be an easement through other land owned by the declarant and to benefit the condominium property,

the easement is created for all purposes to the same extent as if it had been created by a transfer and the declarant had not been the same person as the owner of the other land.

Easement to benefit condominium property

(2) Where, in a transfer that is registered before the registration of a transfer of any unit made by the declarant, an easement through land outside the condominium property is transferred by the declarant to the condominium corporation to be part of the common elements, the easement does not merge by operation of law.

(3) Where, in a transfer that is registered before the registration of a transfer of any unit made by the declarant, the common elements are made subject to an easement expressly intended to benefit other land owned by the declarant, the easement is created for all purposes as if the declarant had not been the same person as the owner of the other land.

Easement affecting common elements

(4) Where, in an instrument, an intention is expressed by a condominium corporation that an easement transferred to the corporation is to be part of the common elements, and any instrument in relation thereto required by the *Condominium Act* has been registered, the easement, upon registration of the instrument in which the intention is expressed, becomes part of the common elements.

Easement becomes part of common elements  
R.S.O. 1980, c. 84

(5) Section 29 of the *Planning Act* does not apply to an easement to which subsection (1) of this section applies if the condominium description was approved or exempted under subsection 50 (2) of the *Condominium Act*, or a predecessor thereof.

Where R.S.O. 1980, c. 379, s. 29, does not apply

(6) Except to the extent that rights governed by this section have been determined by a court, this section has retroactive application.

Retroactive effect

(7) In this section,

Interpretation

(a) "common elements" means common elements;

(b) "declarant" means declarant;

(c) "declaration" means declaration;

(d) "description" means description;

(e) "property" means property; and

(f) "unit" means unit,

as defined in the *Condominium Act*. 1980, c. 49, s. 2.

#### PROCEDURE ON FIRST REGISTRATION

**42.** The examination of a title shall be conducted in the prescribed manner, subject to the following:

Regulations as to examination of title

1. Where notice has been given, sufficient opportunity shall be afforded to any person desirous of objecting to come in and state his objections to the land registrar.
2. The land registrar has jurisdiction to hear and determine any such objections, subject to an appeal to the Divi-

sional Court in the prescribed manner and on the prescribed conditions.

3. If the land registrar, upon the examination of any title, is of opinion that it is open to objection but is nevertheless a title under which the holding will not be disturbed, he may approve of it or may require the applicant to apply to the court, upon a statement signed by the land registrar, for its sanction to the registration.
4. It is not necessary to produce any evidence that by the *Vendors and Purchasers Act* is dispensed with as between vendor and purchaser or to produce or account for the originals of registered instruments unless the land registrar otherwise directs.
5. The land registrar may receive and act upon any evidence that is received in court on a question of title, or any evidence that the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether it is or is not receivable or sufficient in point of strict law, or according to the practice of conveyancers, if it satisfies him of the truth of the facts intended to be made out thereby.
6. The land registrar may refer to and act upon not only the evidence adduced before him in the proceeding in which it is adduced but also any evidence adduced before him in any other proceeding wherein the facts to which it relates were or are in question.
7. The land registrar may also act upon his own personal knowledge of material facts affecting the title upon making and filing a report, stating his knowledge of the particular facts and the means he had of obtaining such knowledge. R.S.O. 1970, c. 234, s. 44; 1979, c. 93, s. 51.

#### Notice

**43.** A notice of an application for first registration is sufficiently served upon an owner, mortgagee or chargee, or his assignee, of land adjoining the land of or claimed by the applicant for first registration if it is sent by registered mail addressed to the owner, mortgagee or chargee, or his assignee, as the case may be, of the land adjoining the land of the applicant at the address furnished under section 166 of this Act or section 37 of the *Registry Act*, or, where no such address has been furnished, addressed to the solicitor whose name appears on the conveyance, mortgage or charge or assignment thereof under which the owner, mortgagee or chargee, or his assignee, appears to have an interest in such adjoining land. R.S.O. 1970, c. 234, s. 45.

R.S.O. 1980,  
c. 520

R.S.O. 1980,  
c. 445

**44.—**(1) A person having or claiming such an interest in unregistered land as entitles him to object to any disposition thereof being made without his consent may apply to the land registrar for the registration of a caution to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of the land.

Caution  
against  
registration  
of land

(2) Every caution under this section shall be renewed before the expiration of five years from the date of registration of the caution, otherwise it ceases to have effect.

Renewal

(3) A caution registered under this section in respect of unpatented land has no validity unless the description contained therein specifies the land in accordance with the description subsequently contained in the patent or describes it in such manner that the land registrar may know that the description in the caution is intended to affect the land described in the patent.

Unpatented  
land

(4) After a caution has been registered in respect of unregistered land and while the caution is in force, registration shall not be made of the land until notice has been served on the cautioner to appear and oppose the registration and until the prescribed time has elapsed after the date of the service of the notice, or the cautioner has appeared, whichever first happens. R.S.O. 1970, c. 234, s. 48; 1979, c. 93, s. 51.

Cautioner  
entitled to  
notice of  
proposed  
registration  
of land

**45.—**(1) If, upon an application for first registration, the land registrar finds that the applicant or his nominee is entitled to be registered, he shall sign a memorandum to that effect at the foot of the application and draft entry and shall transmit them to the Director of Titles, with the deeds, evidence and other papers before him and a draft of the entry of ownership proposed to be made.

Land registrar  
to transmit  
application to  
Director of  
Titles

(2) If the Director of Titles concurs in the memorandum and the draft entry, he shall endorse his approval thereon and return the papers transmitted to him, and the land registrar may thereupon register the applicant or his nominee as owner.

Where Director  
of Titles  
concurs

(3) If the Director of Titles does not concur in the memorandum and draft entry, he shall communicate his opinion to the land registrar and cause such action to be taken as he considers expedient and, if his objections are not removed by explanations or additional evidence, the applicant or his nominee shall not be registered unless the court on appeal, or on a case stated for its opinion, otherwise directs.

Where Director  
of Titles does  
not concur

(4) If there is a contest upon the decision of the Director of Titles, registration shall be delayed for ten days to enable anyone who so desires to appeal. R.S.O. 1970, c. 234, s. 49; 1979, c. 93, s. 51.

Stay of  
proceedings

Exception to  
application  
of s. 45

**46.** Except as provided in subsection 33 (3), section 45 does not apply to applications coming within sections 33 and 34, or to applications for possessory titles, or for the registration of leasehold land where the freehold or other estate out of which the lease is derived is registered land, or where a declaration of the title of the lessor to grant the lease is not required. R.S.O. 1970, c. 234, s. 50.

#### EFFECT OF FIRST REGISTRATION

Liability of  
registered  
land to  
easements  
and certain  
other rights

**47.—(1)** All registered land, unless the contrary is expressed on the register, is subject to such of the following liabilities, rights and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed to be encumbrances within the meaning of this Act:

1. Provincial taxes and succession duties and municipal taxes, charges, rates or assessments, and school or water rates.
2. Any right of way, watercourse, and right of water, and other easements.
3. Any title or lien that, by possession or improvements, the owner or person interested in any adjoining land has acquired to or in respect of the land.
4. Any lease or agreement for a lease, for a period yet to run that does not exceed three years, where there is actual occupation under it.
5. Any right under Part III of the *Family Law Reform Act*, of the spouse of the person registered as owner.
6. Any right of the wife or husband of the person registered as owner to dower or curtesy, as the case may be, in case of surviving the owner.
7. A mechanic's lien where the time limited for its registration has not expired.
8. Any right of expropriation, access or user, or any other right, conferred upon or reserved to or vested in the Crown by or under the authority of any statute of Canada or Ontario.
9. Any public highway.
10. Any liabilities, rights and interests created under section 38 of the *Public Transportation and Highway Improvement Act*.

R.S.O. 1980,  
c. 152

R.S.O. 1980,  
c. 421

11. Any by-law heretofore passed under section 39 of the *Planning Act* or a predecessor of that section, and any other municipal by-law heretofore or hereafter passed, affecting land that does not directly affect the title to land. R.S.O. 1980,  
c. 379

12. The provisions of section 29 of the *Planning Act*.

13. Where the registered owner is or a previous registered owner was a railway company, any interest that may be or may have been created by any instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 139 of the *Railway Act* (Canada), or any predecessor thereof, but, where the previous registered owner was a railway company, this paragraph does not apply to a subsequent registered owner, except a railway company, unless a note of the previous ownership of the land by the railway company has been entered in the title register. R.S.C. 1970,  
c. R-2  
R.S.O. 1970, c. 234, s. 51 (1); 1971, c. 61, s. 1; 1972, c. 132, s. 13 (1); 1978, c. 7, s. 1, *revised*.

(2) Where a licence under the *Crown Timber Act* has been or is granted and the land is registered under this Act, the land shall be deemed to have been and to be subject to the rights of the licensee or his assigns for the current licence year under the licence, and to the rights of Her Majesty in the pine trees under the *Public Lands Act*, without the fact of the land being so subject being expressed in the entry in the register. Effect of  
registration  
of land upon  
timber  
licences  
R.S.O. 1980,  
cc. 109, 413

(3) A parcel of land registered under this Act is not subject to paragraph 3 of subsection (1) if a notice of the application for first registration that contained an accurate description of the parcel, or of a former larger parcel of which the parcel is a part, was served upon the person who at the time of giving the notice was the owner, mortgagee, chargee or purchaser, or his assignee, under a registered instrument of adjoining land and no objection to the first registration was filed with the land registrar within the time allowed by the notice. Where owner  
of adjoining  
land has  
no right  
R.S.O. 1970, c. 234, s. 51 (2, 3); 1979, c. 93, s. 51.

(4) An application under section 30 shall be deemed to be an action for the recovery of land within the meaning of the *Limitations Act*. 1979, c. 93, s. 19. Application  
under s. 30  
deemed action  
for recovery  
of land  
R.S.O. 1980,  
c. 240

(5) Paragraph 7 of subsection (1) does not confer upon a person claiming a mechanic's lien any greater right than he would have if the land were registered under the *Registry Act*. Application of  
subs. (1), par.  
7  
R.S.O. 1980,  
c. 445  
R.S.O. 1970, c. 234, s. 51 (4).

Writs of  
execution

(6) The title of the registered owner for the time being of land is subject to enforceable writs of execution against him that have been recorded under section 137, but no writ of execution against a prior registered owner is enforceable in respect of the land unless a note of such writ has been entered in the title register. R.S.O. 1970, c. 234, s. 51 (6); 1980, c. 49, s. 5.

Estate of  
first regis-  
tered owner  
with  
absolute title

**48.** The first registration of a person as owner of land, in this Act referred to as first registered owner with an absolute title, vests in the person so registered an estate in fee simple in the land, together with all rights, privileges and appurtenances, free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

1. The encumbrances, if any, entered on the register.
2. The liabilities, rights and interests that are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register.
3. Where the first registered owner is not entitled for his own benefit to the land registered, then as between him and any persons claiming under him, any unregistered estates, rights, interests or equities to which such person may be entitled. R.S.O. 1970, c. 234, s. 52.

Estate of  
owner  
registered  
with a  
qualified  
title

**49.—(1)** The registration of a person as first registered owner with a qualified title has the same effect as the registration of such person with an absolute title, except that registration with a qualified title does not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted. R.S.O. 1970, c. 234, s. 53 (1).

Change from  
qualified title  
to absolute title

(2) The registered owner of land with a qualified title may at any time apply to the land registrar to be registered as owner of the land with an absolute title, but the applicant shall not be so registered unless the Director of Titles is satisfied that the estate, right or interest in respect of which the title is qualified is no longer capable of enforcement, or unless a bond or covenant is furnished as provided by section 58. R.S.O. 1970, c. 234, s. 53 (2); 1972, c. 132, s. 14; 1979, c. 93, s. 51.

Estate  
of first  
registered  
owner with  
possessory  
title

**50.—(1)** The registration of a person as first registered owner with a possessory title only does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first registered owner, and subsisting or capable of arising at the time of registration of such owner, but otherwise has the same effect as registration of a person with an absolute title.

(2) The registered owner of land with a possessory title only may at any time apply to the land registrar to be registered as owner of the land with an absolute or qualified title, but the applicant shall not be so registered until the title is approved by the land registrar in the same manner as if the application were for first registration with an absolute or qualified title.

Change from possessory title to absolute or qualified title

(3) After the expiration of ten years from the date of registration of a person as the registered owner with a possessory title only, the then registered owner of the land may, upon payment of the prescribed fees, apply to the land registrar to be entered as owner with an absolute or qualified title, and the land registrar may, either forthwith or after requiring such evidence to be furnished and notices to be given as he considers expedient, register the applicant as owner in fee simple with an absolute title or qualified title, subject to such encumbrances, if any, as the condition of the title requires. R.S.O. 1970, c. 234, s. 54; 1979, c. 93, s. 51.

Application to be registered as absolute or qualified title after ten years

**51.** The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had an absolute title to grant the lease under which the land is held, vests in such person the land comprised in the registered lease relating to the land for all the leasehold estate therein described with all implied or expressed rights, privileges and appurtenances, free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

Estate of first registered owner of leasehold land with a declaration of absolute title of lessor to grant lease

1. All implied and express covenants, obligations and liabilities incident to such leasehold estate.
2. The encumbrances, if any, entered on the register.
3. The liabilities, rights and interests that affect the leasehold estate and that are by this Act declared not to be encumbrances in the case of registered freehold land, unless the contrary is expressed on the register.
4. Where the first registered owner is not entitled for his own benefit to the land registered, then as between himself and any person for whom he holds or claiming under him, any unregistered estates, rights, interests or equities to which such person may be entitled. R.S.O. 1970, c. 234, s. 55.

**52.** The registration of a person as first registered owner of leasehold land, without a declaration of the title of the lessor, does not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held, but, save as aforesaid, has

Estate of first registered owner of leasehold land without a declaration of title of lessor to grant lease



the same effect as the registration of a person as first registered owner of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1970, c. 234, s. 56.

Lessor may be declared to have a qualified title to grant lease

**53.—**(1) Where on the examination of the title of a lessor by the land registrar it appears to him that the title of the lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, the land registrar may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register, and the title of a lessor subject to such excepted estate, right or interest shall be deemed to be a qualified title.

Effect of registration

(2) The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had a qualified title to grant the lease under which the land is held, has the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, except that registration with the declaration of a qualified title does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1970, c. 234, s. 57; 1979, c. 93, s. 51.

No title by adverse possession, etc.  
R.S.O. 1980, c. 240

**54.—**(1) Notwithstanding any provision of this Act, the *Limitations Act* or any other Act, no title to and no right or interest in land registered under this Act that is adverse to or in derogation of the title of the registered owner shall be acquired hereafter or be deemed to have been acquired hertofore by any length of possession or by prescription. R.S.O. 1970, c. 234, s. 58 (1); 1980, c. 49, s. 6.

Operation of section

(2) This section does not prejudice, as against any person registered as first owner of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of the land at the time when the registration of the first owner took place. R.S.O. 1970, c. 234, s. 58 (2).

R.S.O. 1980, c. 445  
not to apply to land under this Act

**55.—**(1) A certificate by the land registrar of the first registration of an owner under this Act shall be registered in the registry division in which the land is situate, and thereafter the *Registry Act* ceases to apply to the land.

Particulars to be stated in certificate for registry office

(2) The certificate, besides describing the land, shall state the date of the first registration, the number of the parcel and the register in which the land is registered, and the registrar shall in his abstract index enter the number of the parcel and the register

as given in the certificate. R.S.O. 1970, c. 234, s. 59; 1979, c. 93, s. 51.

**56.**—(1) Where land is registered subject to mortgages existing thereon at the time of the first registration, the mortgages shall be noted in the register in the same order as they are registered in the registry office, if such mortgages have been so registered, or the dates of the respective registrations thereof shall be stated, but this shall not be taken as an affirmation that such mortgages rank in the order in which they were registered or in the order in which they are noted.

Land  
subject to  
mortgage  
at time of  
registration

(2) Abstracts of all instruments dealing with such mortgages shall thereafter be entered in the register, and the entry thereof shall be deemed the registration of the instrument, and the rights of the parties interested or claiming to be interested in any such mortgage so far as it affects land under this Act shall, subject to sections 37, 38, 40, 48, 50 and 87 to 90, be decided under the registry law as if the registrations had been made under the *Registry Act*. R.S.O. 1970, c. 234, s. 60.

Abstracts  
of instru-  
ments

R.S.O. 1980,  
c. 445

## PART V

### ASSURANCE FUND

#### CONSTITUTION OF FUND, ETC.

**57.**—(1) An assurance fund, to be known as The Land Titles Assurance Fund, shall be formed for the indemnity of persons who may be wrongfully deprived of land or some estate or interest therein by reason of the land being brought under this Act, or by reason of some other person being registered as owner through fraud, or by reason of a misdescription, omission or other error in a certificate of ownership of land or of a charge or in an entry on the register. R.S.O. 1970, c. 234, s. 61 (1).

Assurance  
Fund

(2) Where the amount standing to the credit of the Assurance Fund is less than \$1,000,000, the Assurance Fund shall be increased by payment into it from the Consolidated Revenue Fund of an amount fixed by the Lieutenant Governor in Council.

Idem

(3) Money paid under subsection (2) shall be paid into the Supreme Court. 1979, c. 93, s. 20 (1), *part*.

Money paid  
into  
court

(4) Subject to subsection (5), money standing to the credit of the Assurance Fund and payments received under subsection (2) shall be credited to The Land Titles Assurance Fund Account and shall be invested from time to time under the direction of the Finance Committee of the Supreme Court, and, subject to subsection (6),

Land Titles  
Assurance  
Fund  
Account

the interest and income derived therefrom shall be credited to the same account. R.S.O. 1970, c. 234, s. 61 (5); 1979, c. 93, s. 20 (2).

Payment to  
Treasurer of  
Ontario

(5) The moneys in court at the credit of the Assurance Fund shall on his demand be paid to the Treasurer of Ontario.

Treasurer  
to issue  
stock for  
sums received  
from  
Assurance  
Fund

(6) The Treasurer of Ontario, on receipt of the moneys paid to him under subsection (5), shall issue to the Accountant of the Supreme Court in trust Ontario Government stock to an amount equal to the sum so received, and the stock shall represent the Assurance Fund and be available for the same purposes.

Conditions  
of issue

(7) The stock shall be paid or may be redeemed at such time and shall be subject to such conditions as to inscription, registration and transfer as the Lieutenant Governor in Council considers advisable, and shall bear interest at the rate of 2½ per cent per annum.

Charge on  
Consolidated  
Revenue  
Fund

(8) The stock, together with the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 234, s. 61 (6-9).

Indemnifica-  
tion of  
Assurance  
Fund

**58.** The land registrar may require any applicant for registration to indemnify The Land Titles Assurance Fund against loss by a bond or covenant to Her Majesty, either with or without sureties, or by such other security as he considers expedient. R.S.O. 1970, c. 234, s. 62; 1979, c. 93, s. 51.

Land Titles  
Survey Fund

**59.—(1)** Where the amount of The Land Titles Assurance Fund exceeds \$500,000 at the beginning of a calendar year, the Accountant of the Supreme Court shall, at the beginning of the following year, transfer to a special account, to be maintained by him and entitled "The Land Titles Survey Fund", the amount of interest and income that was credited to The Land Titles Assurance Fund during the calendar year first mentioned. R.S.O. 1970, c. 234, s. 63 (1).

Applications  
for financial  
assistance

(2) An application for financial assistance from The Land Titles Survey Fund may be made to the Director of Land Registration by,

- (a) a registered owner in respect of the costs of a survey of his land;
- (b) an applicant for first registration under this Act in respect of the costs of a survey of his land;

(c) the council of a municipality in respect of the costs of and incidental to an application under section 31;

(d) an applicant under the *Boundaries Act* in respect of the costs of and incidental to an application under that Act, including survey costs. R.S.O. 1980, c. 47

(3) The Director of Land Registration may direct that all or a part of the costs mentioned in an application made under subsection (2) be paid out of The Land Titles Survey Fund. Direction for payment

(4) Upon receipt of a direction of the Director of Land Registration, the Accountant of the Supreme Court shall pay to the person or municipality named in the direction such sum or sums, at such time or times as are stipulated in the direction, out of The Land Titles Survey Fund, so far as that Fund is sufficient for the purpose. Payment from Fund

(5) The determination by the Director of Land Registration of the amount, if any, to be paid from The Land Titles Survey Fund is not subject to appeal. 1972, c. 132, s. 15. Determination final

#### CLAIMS AGAINST FUND

**60.**—(1) A person wrongfully deprived of land or of some estate or interest therein, by reason of the land being brought under this Act or by reason of some other person being registered as owner through fraud or by reason of any misdescription, omission or other error in a certificate of ownership or charge, or in an entry on the register, is entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error. R.S.O. 1970, c. 234, s. 64 (1). Remedy of person wrongfully deprived of land

(2) A person is not entitled to compensation from The Land Titles Assurance Fund in respect of an interest in land existing at the time the land is brought under this Act unless that interest is registered against the title to the land under the *Registry Act* or notice of it is given to the land registrar before the first registration under this Act of a person as owner of the land. 1979, c. 93, s. 21 (1). Where no compensation R.S.O. 1980, c. 445

(3) Subsection (1) does not render liable any purchaser or mortgagee in good faith for valuable consideration by reason of the vendor or mortgagor having been registered as owner through fraud or error or having derived title from or through a person registered as owner through fraud or error, whether the fraud or error consists in a wrong description of the property or otherwise. Purchaser or mortgagee in good faith for value not liable

Liability of  
Fund to  
compensate  
person  
wrongfully  
deprived

(4) If the person so wrongfully deprived is unable by such means or otherwise to recover just compensation for his loss, he is entitled to have the compensation paid out of the Assurance Fund, so far as it is sufficient for that purpose having reference to other charges thereon, if the application is made within six years from the time of having been so deprived or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased. R.S.O. 1970, c. 234, s. 64 (2, 3).

Application  
for com-  
pensation  
from  
Assurance  
Fund

(5) A person claiming to be entitled to payment of compensation out of The Land Titles Assurance Fund shall apply to the Director of Titles.

Hearing

(6) Except where he determines the claim be paid in full, the Director of Titles shall hold a hearing, and the claimant and such other persons as the Director of Titles may specify are parties to the proceedings before him.

How com-  
pensation  
to be  
determined

(7) The liability of the Assurance Fund for compensation and the amount of compensation shall be determined by the Director of Titles, and the costs of the proceedings are in the discretion of the Director of Titles.

Claimant  
to be  
notified

(8) The Director of Titles shall serve notice of his determination under subsection (6) by first class mail on the claimant.

Appeal

(9) Where the Director of Titles determines that compensation should be paid but that the claim not be paid in full, the claimant, if he intends to appeal, shall, within a period of twenty days after the date of mailing of the notice under subsection (7), serve on the Director of Titles notice of his intention to appeal under section 26, and the Director of Titles shall not certify under subsection (10) the amount to the Treasurer of Ontario if a notice of appeal is received within that period or until after the expiry of that period if no notice of appeal is received.

Payment  
out of  
Assurance  
Fund

(10) Subject to subsection (9), the Director of Titles shall certify to the Treasurer of Ontario any amount found to be payable under this section, and, upon receipt of the Director of Titles' certificate, the Treasurer shall pay the amount to the person entitled thereto out of the Consolidated Revenue Fund, and the sums so paid out shall be credited as payments on account of the stock in the hands of the Accountant of the Supreme Court, and the amount of the stock shall be reduced accordingly.

How  
Assurance  
Fund to be  
recouped

(11) Any sum paid out of the Assurance Fund may afterwards, for the benefit of the Assurance Fund, be recovered by action in

the name of the Director of Titles from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error or from his estate, and the Director of Titles' certificate of the payment out of the Assurance Fund is sufficient proof of the debt.

(12) Where a registered disposition would be absolutely void if unregistered or where the effect of the error would be to deprive a person of land of which he is in possession or in receipt of the rents and profits, the Director of Titles may, in the first instance or after a reference to the court, direct the rectification of the register and, in the case of rectification, the person suffering by the rectification is entitled to the compensation provided for by this section. 1979, c. 93, s. 21 (2).

Rectification  
of register

**61.**—(1) Where a person makes a claim upon The Land Titles Assurance Fund for compensation in respect of land patented as mining land or in respect of land the chief value of which consists in the ores, mines or minerals therein and it appears that he is entitled to recover in respect of the land or of some interest therein, in determining the amount of compensation to be paid to him, the entire value of the land shall not be taken at a greater sum than twice the amount that was paid for the original grant from the Crown.

Valuation  
of mining  
lands

(2) Where the amount that was paid for the original grant from the Crown was paid in respect of other land in addition to that for which a claim is so made without it appearing what amount was paid in respect of the particular parcel of land with reference to which the claim is made, the amount so paid, or the portion thereof as to which the fact may not appear to be otherwise, shall be deemed to have been paid *pro rata* in accordance with the acreage or other superficial content of the whole parcel or of the various parcels in respect of which the amount was paid. R.S.O. 1970, c. 234, s. 65.

Apportion-  
ment  
*pro rata*

**62.**—(1) No person is entitled to recover out of the Assurance Fund any compensation,

No com-  
pensation

- (a) where the claim is founded upon a right existing at the time of the first registration of the land and the state of the title of the land at that time was such that the person who was first registered, or the person on whose nomination or authorization the registration was made, by a duly registered conveyance could have conferred, as against the claimant, a valid title to a purchaser in good faith for valuable consideration without notice of any defect in the title, and no sufficient caution had been registered and was in force when the application for first registration was made or a patent was forwarded for

when  
person first  
registered  
could have  
conveyed  
good title  
to purchaser

registration and the land registrar had not actual notice of the defect prior to the first registration;

where  
claimant had  
notice of  
registration  
proceedings

- (b) where the claimant, by direction of the land registrar or in accordance with the practice of his office, had been served with a notice of the proceedings being had in that office, whether such proceedings were prior or subsequent to first registration, and failed to act in accordance with the requirements of the notice or if the land registrar had adjudicated against him and he had failed to prosecute successfully an appeal against the decision of the land registrar; or

where  
claimant's  
negligence  
has caused  
loss

- (c) where the claimant has caused or substantially contributed to the loss by his act, neglect or default, and the omission to register a sufficient caution, notice, inhibition or restriction to protect a mortgage by deposit or other equitable interest or any unregistered right, or other equitable interest or any unregistered interest or equity created under section 74 or otherwise shall be deemed neglect within the meaning of this clause. R.S.O. 1970, c. 234, s. 66 (1); 1979, c. 93, ss. 22, 51.

Interpre-  
tation

- (2) In this section, "claimant" includes the person actually making the claim and any person through whom he claims who he alleges was wrongfully deprived of land or of some estate or interest therein. R.S.O. 1970, c. 234, s. 66 (2).

## PART VI

### PART OWNERS

Registration  
of part  
owners

**63.**—(1) Any two or more persons entitled concurrently or successively, or partly in one mode and partly in another, to such estates, rights or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as owner of the land may apply to the land registrar to be registered as joint owners in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that an individual owner may be registered.

Entry

- (2) Where several persons are so registered as owners, the entry may, if the parties so desire, define the estates, rights and interests, other than trust estates, rights and interests, to which the owners are respectively entitled, and such entry may be made either upon first registration or subsequently in case the estates, rights or interests so arise. R.S.O. 1970, c. 234, s. 67; 1979, c. 93, s. 51.

**64.**—(1) No person shall be registered as owner of an undivided share in freehold or leasehold land or of a charge apart from the other share or shares. R.S.O. 1970, c. 234, s. 68 (1). Undivided shares

(2) Where the extent of a co-owner's interest is not shown on the register, he may, Rights of part owner

(a) transfer or charge a specified share in the land or transfer a share in the charge, as the case may be, if the land registrar is satisfied, by an affidavit of all co-owners setting out the percentage or fractional interest that belongs to the transferor or chargor, that the transferor or chargor has a sufficient interest to transfer or charge such share; or

(b) transfer or charge all of his unspecified share. 1979, c. 93, s. 23.

**65.**—(1) A notice of an express, implied or constructive trust shall not be entered on the register or received for registration. Trusts not to be entered

(2) Describing the owner of freehold or leasehold land or of a charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall be deemed not to be a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with the owner the duty of making any inquiry as to the power of the owner in respect of the land or charge or the money secured by the charge, or otherwise, but, subject to the registration of any caution or inhibition; the owner may deal with the land or charge as if such description had not been inserted. Description of owner as a trustee

(3) Where two or more owners are described as trustees, the property shall be held to be vested in them as joint tenants unless the contrary is expressly stated. Owners described as trustees to be joint tenants

(4) Nothing in this section prevents the registration of a charge given for the purpose of securing bonds or debentures of a corporation, but the registration of such a charge is not a guarantee that the proceedings necessary to render the charge valid have been duly taken. R.S.O. 1970, c. 234, s. 69. Savings

**66.** Any person registered in the place of a deceased owner or to whom a patent is issued as executor or administrator or in any representative capacity shall hold the land or charge, in respect of which he is registered, upon the trusts and for the purposes to which the same is applicable by law and subject to any unregistered estates, rights, interests or equities subject to which the deceased owner held the same, but otherwise in all respects, and in particular as respects any registered dealings with such land or Nature of title of registered fiduciary owners



charge, he shall be in the same position as if he had taken the land or charge under a transfer for a valuable consideration. R.S.O. 1970, c. 234, s. 70.

Registration of trustees under R.S.O. 1980, c. 448

**67.**—(1) Where registered land or an interest therein is acquired by trustees under the *Religious Organizations' Lands Act*, it shall be registered in the name of the religious organization without setting out the purposes or trusts on which the land or interest is held. 1979, c. 93, s. 24 (1).

Registration of other trustees R.S.C. 1970, c. B-3

(2) A person who has been appointed as a trustee under the *Bankruptcy Act* (Canada) or under any other Act of Canada or Ontario or by the court, upon proof of his entitlement satisfactory to the land registrar, may be registered as the owner of registered land or of an interest therein, and he may transfer the same upon proof of compliance with the Act or order under which he was appointed. R.S.O. 1970, c. 234, s. 71 (2); 1979, c. 93, s. 51.

Trustees of pension funds R.S.C. 1952, c. 148

(3) Where a charge is made or transferred to the trustee or trustees of a registered pension fund or plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada), and the charge or transfer of charge has attached thereto an affidavit made by one of the trustees or a solicitor deposing that the fund or plan is so registered, the chargee or transferee may be described in the charge or transfer of charge as the trustee or trustees, naming the fund or plan, and the individual names of the trustee or trustees are not required. 1972, c. 132, s. 17.

Idem

(4) A transfer or cessation of a charge made by the trustee or trustees mentioned in subsection (3) shall not be registered unless there is attached thereto an affidavit made by the trustee or, where there is more than one trustee, by one of them or by the solicitor for the trustee or trustees, deposing that the signing trustee is, or trustees are, authorized to execute the transfer or cessation. 1979, c. 93, s. 24 (2).

Special entry in certain cases

**68.**—(1) Upon the registration of two or more persons as owners of the same land or of the same charge, an entry may, with their consent, be made on the register to the effect that, when the number of such owners is reduced below a certain specified number, no registered disposition of the land or charge shall be made except under the order of the court.

No survivorship

(2) In such a case, the words "No Survivorship" in the entry mean that, if any one of the owners should die, no registered disposition of the land or charge shall be made except under order of the court. R.S.O. 1970, c. 234, s. 73.

## PART VII

## SUBSEQUENT REGISTRATIONS

## GENERAL

**69.** Every transfer or charge signed by a registered owner, or others claiming by transfer through or under him, purporting to transfer or charge freehold or leasehold land, or an interest therein, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take under the transfer or charge a right to be registered as the owner of the land or charge and, where a person applies to be registered under this section, the land registrar may, either forthwith or after requiring such notices to be given as he considers expedient, register the applicant as owner, subject to such encumbrances, if any, as the condition of the title requires, notwithstanding that the transfer or charge has been executed or bears date prior to the entry of the transferor or chargor as the owner of the land or charge. R.S.O. 1970, c. 234, s. 74; 1979, c. 93, s. 51.

Right of transferees and charges to registration

**70.** Subject to section 67, no person, other than a corporation, may be shown as the registered owner of land or a charge unless the person is described by his surname and by at least one given name in full. 1979, c. 93, s. 25.

Description of registered owner

**71.**—(1) No person, other than the registered owner, is entitled to transfer or charge registered freehold or leasehold land by a registered disposition.

Dealings with registered land

(2) Subject to the maintenance of the estate and right of the registered owner, a person having a sufficient estate or interest in the land may create estates, rights, interests and equities in the same manner as he might do if the land were not registered. R.S.O. 1970, c. 234, s. 75.

Unregistered estates, etc.

**72.**—(1) Where by an order of a court of competent jurisdiction or where by virtue of the operation of an Act of Canada or Ontario registered land or any interest therein is stated by the order or Act to vest, be vested or become vested in, or belong to, the Crown in right of Canada or Ontario or any person other than the registered owner of the land, the registered owner shall be deemed for the purposes of this Act to remain the owner thereof,

Meaning of "vest" or "belong"

- (a) until an application to be registered as owner is made by or on behalf of the Crown or other person in or to whom the land is stated to be vested or to belong; or
- (b) until the land is transferred to the Crown or person by the registered owner,

as the case may be, in accordance with the order or Act. R.S.O. 1970, c. 234, s. 76 (1).

## Exception

(2) Subsection (1) does not apply to,

R.S.O. 1980,  
c. 148

(a) an expropriation plan registered in accordance with the *Expropriations Act*; or

R.S.O. 1980,  
c. 421

(b) a plan registered in accordance with the *Public Transportation and Highway Improvement Act* in the highways register mentioned in subsection 75 (2) of this Act. R.S.O. 1970, c. 234, s. 76 (2); 1971, c. 61, s. 1; 1972, c. 1, s. 43 (3).

Power of  
attorney  
authorized

**73.**—(1) A person may, under a power of attorney, authorize another person to act for him in respect of any land or interest therein under this Act.

## Registration

(2) A power of attorney or a certified copy thereof may be registered in the prescribed manner.

## Revocation

(3) No registered power of attorney shall be deemed to be revoked until a revocation thereof is registered or evidence is filed with the land registrar showing that it is no longer in force. R.S.O. 1970, c. 234, s. 77; 1979, c. 93, s. 51.

Protection  
of un-  
registered  
estates

**74.**—(1) Any person entitled to or interested in any unregistered estates, rights, interests or equities in registered land may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions or other restrictions as are authorized by this Act or by the Director of Titles. R.S.O. 1970, c. 234, s. 78.

Effect of  
registration

(2) Where a notice, caution, inhibition or restriction is registered, every registered owner of the land and every person deriving title through him, excepting owners of encumbrances registered prior to the registration of such notice, caution, inhibition or restriction, shall be deemed to be affected with notice of any unregistered estate, right, interest or equity referred to therein. 1972, c. 132, s. 18.

Effect of  
unregistered  
instruments

**75.**—(1) No person, other than the parties thereto, shall be deemed to have any notice of the contents of any instruments, other than those mentioned in the existing register of title of the parcel of land or that have been duly entered in the books of the office kept for the entry of instruments received or are in course of entry. R.S.O. 1970, c. 234, s. 79 (1).

Highways  
register

(2) For the purposes of subsection (1), the highways register mentioned in clause 162 (c) shall be deemed to be a book

kept for the entry of instruments. R.S.O. 1970, c. 234, s. 79 (2); 1972, c. 1, s. 43 (4).

(3) Subject to the regulations, the Trans-Canada Pipe Line register established under clause 162 (c) shall be deemed, for the purposes of this Act, to be a register of the title of land or interests therein, including easements, owned by TransCanada PipeLines Limited. 1979, c. 93, s. 26.

Trans-Canada  
Pipe Line  
register

**76.**—(1) Where a person who, if not under disability, might have made an application, given consent, or done an act, or been party to a proceeding under this Act is a minor, a mentally defective person or a mentally incompetent person, the guardian of the minor or committee of the estate of the mentally defective person or mentally incompetent person may make such application, give such consent, do such act or be party to such proceeding as such person if free from disability might have made, given, done or been party to, and shall otherwise represent such person for the purposes of this Act.

Where  
party  
under  
disability

(2) Where the minor has no guardian or the mentally defective person or mentally incompetent person has no committee of his estate or if a person yet unborn is interested, the Official Guardian shall act with like power or the land registrar may appoint a person with like power to act for the minor, mentally defective person, mentally incompetent person or person yet unborn. R.S.O. 1970, c. 234, s. 80; 1979, c. 93, s. 51.

Idem

**77.** Where, on an application for the registration of an instrument after first registration or for the registration of a transmission, the land registrar is unable to come to a clear conclusion as to the action that he should take, he shall delay making the required entry until he has stated the facts to the Director of Titles for his opinion, and in submitting the case the land registrar shall state his own view and his reasons therefor. R.S.O. 1970, c. 234, s. 81; 1979, c. 93, s. 51.

Submission  
of case to  
Director of  
Titles where  
land registrar  
in doubt

**78.** Upon the application of the registered owner, any entry in the register of his title may be amended by the land registrar to reflect the effect of other statutes or orders of a court or a change in the name of the owner, or such other changes as have occurred in fact. R.S.O. 1970, c. 234, s. 82; 1979, c. 93, s. 51.

Amendment  
of register

**79.** In respect of the first registration of land or any subsequent registration of an instrument under this Act, the land registrar may require such proof as he considers sufficient, or as is prescribed by the Director of Titles, of compliance with any Act of Canada or Ontario that if not complied with would affect the title

Proof of  
compliance  
with other  
statutes

of the first registered owner or the title or interest of the person taking under the subsequent instrument. R.S.O. 1970, c. 234, s. 83; 1979, c. 93, s. 51.

Instruments  
deemed  
applications  
to amend  
register

**80.**—(1) Except as otherwise provided by this Act, every instrument presented for registration by which, when registration thereof is completed, an interest in registered land is created, transferred or terminated shall be deemed to be an application to the land registrar to amend the registered title of the land mentioned therein.

Idem

(2) A plan, certificate, order or by-law made under an Act of Canada or Ontario, which when registered has the effect of transferring, vesting or forfeiting registered land or an interest therein, shall be deemed to be an instrument for the purposes of subsection (1).

Certain  
instruments  
not within  
subs. (1)

(3) An agreement or lease or other instrument in respect of which no provision is made by this Act for registration but which is filed in support of or mentioned in a caution, notice of lease or other notice authorized by this Act shall be deemed not to be registered nor to be an instrument for the purposes of subsection (1). R.S.O. 1970, c. 234, s. 84; 1979, c. 93, s. 51.

Time of  
receipt to  
be noted

**81.**—(1) The day, hour and minute of the receipt of each instrument presented for registration and of each copy of a writ or lien received under section 137 shall be noted thereon by the officer or clerk receiving the instrument or copy.

Order of  
registration

(2) Subject to the rules, an instrument received for registration shall be registered in the order of time in which it is so received, unless before registration is completed it is withdrawn or the land registrar decides that it contains a material error, omission or deficiency or that there is evidence lacking that he considers requisite or declines registration for any other reason, and notifies the parties or their solicitors accordingly within twenty-one days after being so received and allows a period of time not less than seven and not more than thirty days from the date of such notification for correction of the error, omission or deficiency or for furnishing evidence and, when the error, omission or deficiency is corrected or evidence furnished within the time allowed, the instrument has priority as if it had been correct in the first instance, but, if the error, omission or deficiency is not corrected or if evidence is not furnished within the time allowed or if the person desiring registration fails to appeal successfully from the decision, the land registrar may proceed with other registrations affecting the land as if the instrument had not been presented for registration, and the land registrar shall be deemed not to be affected with notice of the contents of the instrument.

(3) Registration of an instrument is complete when the entry in the proper register and particulars of registration thereof on the instrument are signed by the land registrar, his deputy or a signing officer, and the time of receipt of the instrument shall be deemed to be the time of its registration. When registration complete

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register. Effect of registration

(5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, notwithstanding any express, implied or constructive notice, are entitled to priority according to the time of registration. Priorities

(6) Upon registration of an instrument in the prescribed form, the rights of priority acquired by registration may be postponed to rights acquired or claimed under another registered instrument. Postponement of registered rights  
R.S.O. 1970, c. 234, s. 85; 1979, c. 93, s. 51.

**82.** Notwithstanding any statute or rule of law, a charge or transfer of registered land may be duly made by an instrument not under seal and, if so made, the instrument and every agreement, stipulation and condition therein has the same effect for all purposes as if made under seal, but this section does not apply to the execution of a transfer or charge by a corporation. Charges and transfers may be made without seal  
R.S.O. 1970, c. 234, s. 86; 1972, c. 132, s. 20, *revised*.

**83.** The land registrar may enter as owner of freehold or leasehold land or of a charge any person who is entitled to the land or charge through the death of the owner, although the deceased had not been registered as owner, or any person who is entitled by virtue of the exercise of a power conferred by a statute, will, deed or other instrument, whether the person so entitled claims directly from the deceased or directly under the power, or through any other person entitled by virtue of the death or power or through a succession of transfers or transmissions. Right to registration  
R.S.O. 1970, c. 234, s. 87; 1979, c. 93, s. 51.

**84.** Where an instrument made in accordance with the forms in use or sufficient to pass an estate or interest in land under the *Registry Act* deals with land under this Act, the land registrar Registration of instruments not in prescribed form  
R.S.O. 1980, c. 445

may, in his discretion, register it under this Act and, when so registered, it has the same effect as if made in the prescribed form. R.S.O. 1970, c. 234, s. 89; 1979, c. 93, s. 51.

Prohibitions  
on taking  
affidavits

**85.** No person authorized to take affidavits shall take an affidavit,

(a) as to the execution of an instrument to which he is a party; or

(b) as to the execution of an instrument unless the witness has subscribed on the instrument his name in his handwriting as witness. 1979, c. 93, s. 27.

#### TRANSFERS

Transfer  
of land

**86.**—(1) A registered owner may transfer land or any part thereof in the prescribed manner.

Registering  
transferee  
as owner

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the land transferred, and the transferor shall be deemed to remain owner of the land until the registration of the transfer has been completed in accordance with this Act. R.S.O. 1970, c. 234, s. 90; 1979, c. 93, s. 51.

Estate of  
transferee  
for valuable  
considera-  
tion of land  
with absolute  
title

**87.** A transfer for valuable consideration of land registered with an absolute title, when registered, confers on the transferee an estate in fee simple in the land transferred, together with all rights, privileges and appurtenances, subject to,

(a) the encumbrances, if any, entered or noted on the register; and

(b) the liabilities, rights and interests, if any, as are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register,

and as to such rights, privileges and appurtenances, subject also to any qualifications, limitation or encumbrance to which the same are expressed to be subject in the register, or where such rights, privileges and appurtenances are not registered, then subject to any qualification, limitation or encumbrance to which the same are subject at the time of the transfer, but free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario. R.S.O. 1970, c. 234, s. 91.

Estate of  
transferee  
for valuable  
considera-  
tion of land  
with qualified  
title

**88.** A transfer for valuable consideration of land registered with a qualified title, when registered, has the same effect as a

transfer for valuable consideration of the same land registered with an absolute title, except that such transfer does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1970, c. 234, s. 92.

**89.** A transfer for valuable consideration of land registered with a possessory title does not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered owner, and subsisting, or capable of arising, at the time of the first registration, but otherwise, when registered, has the same effect as a transfer for valuable consideration of the same land registered with an absolute title. R.S.O. 1970, c. 234, s. 93.

Estate of transferee for valuable consideration of land with possessory title

**90.** A transfer of registered land, made without valuable consideration, is subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same, but otherwise, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, has the same effect as a transfer of the same land for valuable consideration. R.S.O. 1970, c. 234, s. 94.

Estate of voluntary transferee of land

**91.** A purchaser for valuable consideration when registered is not affected by the omission to send any notice directed to be given by this Act, or by the non-receipt thereof. R.S.O. 1970, c. 234, s. 95.

Purchasers for value not affected by omission to send notices

**92.—(1)** In this section,

Interpretation

(a) "owner to uses" means a transferee registered under a transfer to uses;

(b) "transfer to uses" means a transfer expressed to be given to such uses as the transferee may appoint by transfer, charge or will;

(c) "unencumbered interest" means the interest that an owner to uses is capable of appointing.

(2) A transfer to uses may be registered.

Transfer to uses may be registered

(3) An owner to uses may exercise his power of appointment by a transfer or charge in the prescribed form or by his will.

Exercise of power of appointment

(4) An appointment by way of charge by an owner to uses does not exhaust his power of appointment.

Charge does not exhaust power

(5) Notwithstanding the registration of a cessation of a charge,

Effect of cessation of charge



(a) that was made by way of appointment by the owner to uses; or

(b) to which the land was subject when he became the owner to uses,

the owner to uses may exercise his power of appointment as though the charge had not been made.

Effect of  
default of  
appointment

(6) An owner to uses who dies without having exercised his power of appointment by transfer, charge or will shall be deemed to have appointed the land by way of transfer to himself immediately before his death.

Idem

(7) An owner to uses who has appointed the land or a part thereof in respect of which he has a power of appointment by way of charge and who dies without having appointed by way of transfer or will shall be deemed to have appointed the unencumbered interest in the land by way of transfer to himself immediately before his death. R.S.O. 1970, c. 234, s. 96 (1-7).

#### CHARGES AND ENCUMBRANCES

Creation of  
charges

**93.—**(1) A registered owner may in the prescribed manner charge the land with the payment at an appointed time of any principal sum of money either with or without interest or as security for any other purpose and with or without a power of sale. R.S.O. 1970, c. 234, s. 98 (1).

What charge  
shall contain

(2) A charge that secures the payment of money shall contain the amount of the principal sum that the charge secures, the rate of interest and the periods of payment including the due date. 1979, c. 93, s. 29 (1).

Effect of  
charge when  
registered

(3) The charge, when registered, confers upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications to which his interest is subject, but free from any unregistered interests in the land.

Where  
advances  
under  
registered  
charge to  
have  
priority  
over  
subsequent  
charges

(4) A registered charge is, as against the chargor, his heirs, executors, administrators, assigns and every other person claiming by, through or under him, a security upon the land thereby charged to the extent of the money or money's worth actually advanced or supplied under the charge, not exceeding the amount for which the charge is expressed to be a security, notwithstanding that the money or money's worth, or some part thereof, was advanced or supplied after the registration of a transfer, charge or

other instrument affecting the land charged, executed by the chargor, his heirs, executors or administrators and registered subsequently to the first-mentioned charge, unless, before advancing or supplying the money or money's worth, the registered owner of the first-mentioned charge had actual notice of the execution and registration of such transfer, charge or other instrument, and the registration of such transfer, charge or other instrument after the registration of the first-mentioned charge does not constitute actual notice.

(5) An instrument in the nature of a deed of trust and mortgage that provides for the issuance of bonds or debentures may, upon the authorization of the parties thereto or their solicitors, be registered as a charge upon the lands of the grantor, and the entry in the register shall state the aggregate principal sum and the rate of interest of such bonds or debentures. Bond mortgage may be registered as charge upon authorization of parties

(6) The authorization mentioned in subsection (5) shall identify the lands to be charged in each land registry office for a land titles division and state the aggregate principal sum and interest rate of the bonds or debentures mentioned in that subsection. R.S.O. 1970, c. 234, s. 98 (3-6). What to be included in the authorization

(7) A charge registered under subsection (5) may be discharged by a cessation in the prescribed form. R.S.O. 1970, c. 234, s. 98 (9). Cessation

(8) A charge in the form of a debenture or similar instrument shall not be registered unless the name of the person entitled to receive the money payable thereunder and to give a discharge thereof is set out in the instrument. 1972, c. 132, s. 23. Debentures

**94.—**(1) Where a registered charge of freehold land is created, there shall be implied on the part of the registered owner of the land at the time of the creation of the charge, his heirs, executors, administrators and successors, subject to any express provision in the instrument that created the charge or in any other registered instrument related thereto, covenants with the registered owner for the time being of the charge, Implied covenant to pay charges

(a) to pay the principal sum charged and interest, if any, thereon at the appointed time and rate, and all taxes, rates, charges, rents, statute labour or other impositions theretofore or thereafter imposed or charged on the land, and that, in case of default, all payments made by the owner of the charge may be added to the principal sum and bear interest; and

(b) if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the

appointed rate on so much of the principal sum as for the time being remains unpaid. R.S.O. 1970, c. 234, s. 99 (1); 1980, c. 49, s. 7.

Provision  
where charge  
expressed to  
be made under  
R.S.O. 1980,  
c. 474

(2) Where a charge, whether or not under seal, is expressed to be made in pursuance to the *Short Forms of Mortgages Act*, or refers thereto, and contains any form of words numbered 1, 2, 6, 7, 11, 13, 14 or 15 in Column One of Schedule B to that Act, whether expressed in the first or third person, such words have the same meaning and effect as the words under the corresponding number in Column Two of that Schedule, and the provisions of that Act apply to the charge.

When  
chargee may  
distrain for  
arrears of  
interest

(3) Where in a charge made in pursuance of the *Short Forms of Mortgages Act* there is inserted the provision that the chargee may distrain for arrears of interest, such provision confers upon the chargee the same right of distress as would be conferred upon a mortgagee of land not under the provisions of this Act. R.S.O. 1970, c. 234, s. 99 (2, 3).

Implied  
covenants  
in charge  
of leaseholds

**95.** Where a registered charge of leasehold land is created, there shall be implied on the part of the registered owner of the leasehold land at the time of the creation of the charge, his heirs, executors, administrators and successors, subject to any express provision in the instrument that created the charge or in any other registered instrument relating thereto, covenants with the registered owner for the time being of the charge,

- (a) that the registered owner of the leasehold land, at the time of the creation of the charge, his executors, administrators or assigns will pay, perform and observe the rent, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed; and
- (b) will keep the owner of the charge, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of such rent, or any part thereof, or the breach of such covenants or conditions or any of them. R.S.O. 1970, c. 234, s. 100; 1980, c. 49, s. 8.

Entry by  
owner of  
charge

**96.** Subject to any express provision in the instrument that created the charge or in any other registered instrument relating thereto, the registered owner of a registered charge, for the purpose of obtaining satisfaction of any money due to him under the charge, at any time during the continuance of the charge, may enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any person appearing on the register to be prior encum-

brancer, and to the liability attached to a mortgagee in possession. R.S.O. 1970, c. 234, s. 101; 1980, c. 49, s. 9.

**97.** Subject to any express provision in the instrument that created the charge or in any other registered instrument relating thereto, the registered owner of a registered charge may enforce it by foreclosure or sale in the same manner and under the same circumstances in and under which he might enforce it if the land had been transferred to him by way of mortgage, subject to a proviso for redemption. R.S.O. 1970, c. 234, s. 102; 1980, c. 49, s. 10.

Foreclosure  
by owner  
of charge

**98.—**(1) Subject to the *Mortgages Act* the registered owner of a registered charge that contains a power of sale, upon production of evidence satisfactory to the land registrar, may sell and transfer the interest in the land or any part thereof that is the subject of the charge in accordance with the terms of the power in the same manner as if he were the registered owner of the land to the extent of such interest therein.

Remedy of  
owner of  
charge with  
power of sale  
R.S.O. 1980,  
c. 296

(2) Upon the registration of a transfer under subsection (1) and upon satisfactory evidence being produced, the land registrar may delete from the register the entry of an instrument or writ appearing to rank subsequent to the charge under which the land is sold, and thereupon the interest of every person claiming under such subsequent instrument or writ ceases to affect the land. R.S.O. 1970, c. 234, s. 103; 1979, c. 93, s. 51.

Effect of  
sale by  
chargee

**99.** No person, other than the registered owner of a registered charge, is entitled to register a transfer of the charge, but, subject to the maintenance of the right of such owner, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject-matter admits, in and with which unregistered estates and interests may be created in registered land. R.S.O. 1970, c. 234, s. 104.

Dealings with  
registered  
charge

**100.—**(1) The registered owner of a registered charge may, in the prescribed manner, transfer the charge to another person as owner.

Transfer of  
charges

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the charge transferred.

Transfer  
completed  
by entry on  
register

(3) The transfer, when registered, confers upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge confers upon the transferee the ownership of such part free from any unregistered interests therein.

Effect of  
registration  
of transfer

As between  
chargor and  
chargee

(4) Every transfer of a charge is subject to the state of account upon the charge between the chargor and the chargee.

Transferor  
deemed  
owner until  
registration

(5) The transferor shall be deemed to remain owner of the charge until registration of the transfer of charge has been completed in accordance with this Act.

Transfer of  
part of a  
charge

(6) The registered owner of a registered charge may transfer a part of the sum secured by the charge, and the part so transferred may be given priority over the remaining part, or may be deferred or may continue to rank equally with it as is stated in the transfer.

Transfer of  
charge may  
include pro-  
vision to  
retransfer

(7) A charge of a charge shall not be registered, but a charge may be transferred subject to a provision to retransfer it to the transferor of the charge upon the payment of a sum of money either with or without interest, or upon the performance of any other condition, and, until the charge has been retransferred, the transferee of the charge shall for the purposes of this Act be deemed to be the absolute owner thereof. R.S.O. 1970, c. 234, s. 105; 1979, c. 93, s. 51.

Cessation  
of en-  
cumbrance

**101.**—(1) The land registrar shall, on the requisition of the registered owner of land and on due proof of the satisfaction of a charge thereon, or may, on the requisition of the registered owner of a registered charge or of his personal representative or on his certificate of the satisfaction thereof, note on the register in the prescribed manner the cessation of the charge, and thereupon the charge ceases.

Other en-  
cumbrances

(2) The land registrar may in like manner and with the like effect note the cessation of any other encumbrance. R.S.O. 1970, c. 234, s. 106 (1, 2); 1979, c. 93, s. 51.

Partial  
cessation  
of charge

(3) On the requisition or certificate of the registered owner of a registered charge or of the personal representative of such owner authorizing or certifying the discharge of any part of the land therefrom, the land registrar may note on the register the discharge of such land from the charge, and thereupon the charge ceases as to the land discharged. 1979, c. 93, s. 30.

Death of  
person  
certifying to  
cessation of  
charge

(4) The death of the person who signed the requisition or certificate does not revoke or otherwise affect the discharge. R.S.O. 1970, c. 234, s. 106 (4).

Complete  
or partial  
discharge  
of en-  
cumbrance  
existing  
at first  
registration

**102.**—(1) Whereupon the first registration of land notice of an encumbrance affecting the land has been entered on the register, the land registrar, on proof to his satisfaction of the discharge of the encumbrance, shall note in the prescribed manner on the register the cessation of the encumbrance and thereupon the encumbrance ceases.

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or the registered assignee thereof, or of the personal representative of such mortgagee or assignee, authorizing or certifying the discharge of the whole or a part of the land therefrom, or the discharge of the whole or a part of the money thereby secured, the land registrar may note on the register the discharge of the land from the mortgage or the discharge of the part of the money, and thereupon the encumbrance ceases as to the land or money discharged.

Note of discharge on requisition of mortgagee

(3) The death of the person who signed the requisition or certificate does not revoke or otherwise affect it. R.S.O. 1970, c. 234, s. 107; 1979, c. 93, s. 51.

Death of person after signing requisition

**103.** Where it appears to the satisfaction of the land registrar that a lien under the *Mechanics' Lien Act* has ceased to exist, he may make an entry in the register cancelling the claim, and thereupon the claim ceases to affect the land. R.S.O. 1970, c. 234, s. 108; 1979, c. 93, s. 51.

Cancellation of mechanic's lien  
R.S.O. 1980, c. 261

#### LEASEHOLD INTERESTS

**104.**—(1) A registered owner of leasehold land may, in the prescribed manner, transfer the whole of his estate in the land or in a part thereof.

Transfer of leasehold land

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the leasehold land transferred and, until the registration of the transfer has been completed in accordance with this Act, the transferor shall be deemed to remain owner. R.S.O. 1970, c. 234, s. 109; 1979, c. 93, s. 51.

Transferor deemed owner until registration

**105.** A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, when registered, vests in the transferee the land transferred for all the leasehold estate described in the registered lease relating to such land and then unexpired, with all implied or expressed rights, privileges and appurtenances, free from all estates and interests whatsoever, including any estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

Estate of transferee for valuable consideration of leasehold land with a declaration of absolute title of lessor

1. All implied and express covenants, obligations and liabilities incident to such estate.
2. The encumbrances, if any, entered or noted on the register.

3. The liabilities, rights and interests that affect the leasehold estate and that are by this Act declared not to be encumbrances in the case of registered freehold land unless the contrary is expressed on the register. R.S.O. 1970, c. 234, s. 110.

Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor

**106.** A transfer for valuable consideration of leasehold land, registered without a declaration of the title of the lessor, does not affect the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held, but otherwise, when registered, has the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1970, c. 234, s. 111.

Estate of transferee for valuable consideration of leasehold land with a declaration of qualified title of lessor

**107.** A transfer for valuable consideration of leasehold land, registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held, when registered, has the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, except that such transfer does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration. R.S.O. 1970, c. 234, s. 112.

Estate of voluntary transferee of leasehold land

**108.** A transfer of registered leasehold land made without valuable consideration is subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same, but otherwise, when registered, in all respects and in particular as respects registered dealings on the part of the transferee, has the same effect as a transfer of the same land for valuable consideration. R.S.O. 1970, c. 234, s. 113.

Implied covenants on transfer of leasehold estates

**109.** On the transfer of registered leasehold land, subject to any express provision in the transfer or in any other registered instrument relating thereto, there shall be implied,

- (a) on the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted or knowingly suffered, the rents, covenants and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed and observed, have been so paid, performed and observed up to the date of the transfer; and
- (b) on the part of the transferee a covenant with the transferor that the transferee, his executors, administrators or assigns will pay, perform and observe the rents, coven-

ants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed, and will keep the transferor, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of the rent or a part thereof, or the breach of the covenants or conditions or any of them. R.S.O. 1970, c. 234, s. 114; 1980, c. 49, s. 11.

**110.**—(1) A lessee or other person entitled to or interested in a lease or agreement for a lease of registered land may apply to the land registrar to register notice of the lease or agreement in the prescribed manner. Lessee may apply for registration of notice of lease

(2) Where the lease is by the registered owner of the land, the land registrar may without notice to him enter on the register such notice thereof as he considers necessary. Lease by registered owner

(3) Where the lease or agreement for a lease is not by the registered owner but his title appears to be subject thereto, the land registrar, with the concurrence of the owner, may enter notice of the lease or agreement on the register. R.S.O. 1970, c. 234, s. 115 (1-3); 1979, c. 93, s. 51. Lease not by registered owner

(4) The applicant shall deliver to the land registrar the original lease or agreement or an executed copy thereof and, if the application is granted, the land registrar shall make a note on the register identifying the lease or agreement, and the lease or agreement or copy so deposited shall be deemed to be the instrument of which notice is given. R.S.O. 1970, c. 234, s. 115 (4); 1979, c. 93, ss. 31 (1), 51. Lease or executed copy to be deposited

(5) Where notice of a lease or agreement for a lease is registered, every registered owner of the land and every person deriving title through him, excepting owners of encumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of the lease or agreement as being an encumbrance on the land in respect of which the notice is entered. R.S.O. 1970, c. 234, s. 115 (6). Effect of registration

(6) Where notice of a lease or agreement for a lease has been registered, a notice of, Notice of interest in lease

(a) a sublease;

(b) an assignment of the lease;

(c) a charge of the lease;

(d) an assignment of the lessor's interest in the lease; or



(e) a determination of the lease;

may be registered. R.S.O. 1970, c. 234, s. 115 (7); 1979, c. 93, s. 31 (2).

Priorities  
under leases

(7) Subject to paragraph 4 of subsection 47 (1) and except where the person claiming an interest under a lease or agreement for a lease of which interest a notice has been registered has actual notice of another interest under the lease or agreement for a lease or under another lease or agreement for a lease, the first-mentioned interest under the lease or under the agreement for a lease takes priority over one of which a notice has not been registered. R.S.O. 1970, c. 234, s. 115 (8).

Determina-  
tion of lease  
existing  
at first  
registration

**111.** The land registrar, on proof to his satisfaction of the determination of a lease of registered land existing at first registration, shall note on the register the determination of the lease. R.S.O. 1970, c. 234, s. 116; 1979, c. 93, s. 51.

#### CERTIFICATES

Certificates,  
etc., to be  
evidence

**112.** A certificate of ownership or a certificate of charge is *prima facie* evidence of the matters therein contained, and an office copy of a registered lease is *prima facie* evidence of the contents of the registered lease. R.S.O. 1970, c. 234, s. 122.

Effect of  
deposit of  
certificate or  
office copy  
of lease

**113.** Subject to any registered estates, charges or rights, the deposit of a certificate of ownership or of an office copy of a registered lease for the purpose of creating a lien on the land to which the certificate or lease relates shall be deemed equivalent to a deposit of the title deeds of the land. R.S.O. 1970, c. 234, s. 123.

Production  
of certificate  
of ownership

**114.** Where upon an application for the registration of a charge or of a transfer of land or of a transfer of a charge the land registrar considers it expedient to require the production of the certificate of ownership, if any is outstanding, either for the purpose of identifying the person dealing with the land or charge or for cancellation or for any other purpose, he may do so, and may decline to register the instrument until the certificate has been produced and, if the certificate is not produced within such time as the land registrar limits, he may return the instrument. R.S.O. 1970, c. 234, s. 124; 1979, c. 93, s. 51.

Right to  
compel  
production  
of certificate  
of ownership

**115.—(1)** A person who is entitled to have a transfer or charge entered on the register may require the holder of the certificate of ownership, if any is outstanding, to produce the certificate to the land registrar, or to deliver it to the person so entitled for production for the purpose of having all proper entries or alterations made thereon by the land registrar or for cancellation.

(2) A person entitled to have a cessation of a charge registered may require the production of an outstanding certificate of the charge in like manner for cancellation. R.S.O. 1970, c. 234, s. 125; 1979, c. 93, s. 51. Certificate of ownership of a charge which has ceased

**116.**—(1) The land registrar may issue to any person entitled to inspect the register of title a certificate of search in the prescribed form or in such form as may be authorized by the Director of Titles. Certificate of search

(2) A certificate of search is *prima facie* evidence of the matters therein contained. R.S.O. 1970, c. 234, s. 127; 1979, c. 93, s. 51. Idem

#### RESTRICTIONS, ETC.

**117.**—(1) Where the registered owner of freehold or leasehold land or of a charge desires to impose restrictions on transferring or charging the land or charge, he may apply to the land registrar to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner determines, are done: Power to place restrictions on register

1. Notice of an application for a transfer or for the creation of a charge is transmitted by registered mail to such address as he specifies to the land registrar.
2. The consent of some person or persons, to be named by him, is given to the transfer or the creation of a charge.
3. Some other matter or thing is done as is required by him and approved by the land registrar.

(2) If the land registrar is satisfied of the right of the applicant to impose such restrictions, he shall make a note of them on the register and no transfer shall be made or charge created except in conformity therewith. Land registrar to enter restrictions in register

(3) The land registrar is not required to enter a note of a restriction, except upon such terms as to payment of the fees and otherwise as are prescribed, or to enter a note of a restriction that he considers unreasonable or calculated to cause inconvenience. Discretion of the land registrar

(4) Any such restriction may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the register to be interested in the restriction, and is also subject to be set aside by the court. R.S.O. 1970, c. 234, s. 128; 1979, c. 93, s. 51. Restrictions may be withdrawn or set aside

Registration  
of conditions  
and restric-  
tions, on  
application

**118.—**(1) Upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a condition or restriction that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition or restriction running with or capable of being legally annexed to land.

Registration  
of conditions,  
restrictions  
and  
covenants,  
on transfer

(2) The land registrar may register as annexed to the land a condition, restriction or covenant that is included in a transfer of registered land that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition, restriction or covenant running with or capable of being legally annexed to land.

Registration  
of covenants,  
on applica-  
tion

(3) Upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a covenant that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other covenant running with or capable of being legally annexed to land.

Idem

(4) A covenant shall not be registered under subsection (3) unless,

- (a) the covenantor is the owner of the land to be burdened by the covenant;
- (b) the covenantee is a person other than the covenantor;
- (c) the covenantee owns land to be benefitted by the covenant and that land is mentioned in the covenant; and
- (d) the covenantor signs the application to assume the burden of the covenant.

Notice and  
modification  
or discharge  
of covenants

(5) The first owner and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition or covenant, but any such condition or covenant may be modified or discharged by order of the court on proof to the satisfaction of the court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant.

Covenants  
or conditions  
running  
with land

(6) The entry on the register of a condition or covenant as running with or annexed to land does not make it run with the land, if such covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

(7) Where a condition or covenant has been entered on the register as annexed to or running with land and a similar condition is contained in a subsequent transfer or a similar covenant is in express terms entered into with the owner of the land by a subsequent transferee, or *vice versa*, it is not necessary to repeat the condition or covenant on the register or to refer thereto, but the land registrar may, upon a special application, enter the condition or covenant either in addition to or in lieu of the condition or covenant first mentioned.

Subsequent  
transfers

(8) Where a condition or covenant has been entered on the register as annexed to or running with land for a fixed period and the period has expired, the land registrar may, at any time after ten years from the expiration of the period, remove the entry from the register. R.S.O. 1970, c. 234, s. 129 (1-8); 1979, c. 93, s. 51.

Removal of  
entry of  
condition or  
covenant  
from  
register

(9) Where a condition, restriction or covenant has been registered as annexed to or running with the land and no period or date was fixed for its expiry, the condition, restriction or covenant is deemed to have expired forty years after the condition, restriction or covenant was registered, and may be deleted from the register by the land registrar. 1979, c. 93, s. 34.

Condition,  
etc.,  
expires  
after  
40 years

(10) Where a condition or restriction has been registered as annexed to land, the condition or restriction is as binding upon any person who becomes the registered owner of the land or a part thereof as if the condition or restriction had been in the form of a covenant entered into by the person who was the registered owner of the land at the time of the registration of the condition or restriction. R.S.O. 1970, c. 234, s. 129 (10).

Effect of  
conditions  
and  
restrictions

#### DOWER AND CURTESY

**119.**—(1) Where a person claims that registered land is free from dower and no instrument can be produced and registered showing release of dower by the widow of the registered owner, the land registrar may, upon satisfactory evidence produced before him, give notice to the widow to support her claim to dower in the registered land within thirty days.

Claim that  
land is free  
from dower

(2) If the widow of the registered owner fails to claim her dower within the thirty days, the land registrar may enter on the register a note that the land is free from dower, and this entry is a bar to any claim for dower by the widow.

Widow barred  
after failure  
to claim  
dower

(3) If the widow of the registered owner claims her right to dower within the thirty days, the land registrar may hear and determine her claim. R.S.O. 1970, c. 234, s. 131 (1-3); 1979, c. 93, s. 51.

Dower claim  
decided by  
land registrar

Registration of notices of estates in dower or by the curtesy

**120.** A person entitled to an estate in dower or by the curtesy in registered land may apply in the prescribed manner to the land registrar to register notice of such estate, and the land registrar, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form, and, when so registered, such estate is an encumbrance appearing on the register and shall be dealt with accordingly. R.S.O. 1970, c. 234, s. 133; 1979, c. 93, s. 51.

#### DEATH OF REGISTERED OWNER

Transmission on death of owner of freehold land

**121.** On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land, such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in the land, be appointed by the land registrar, regard being had to the rights of the several persons interested in the land and in particular to the selection of any such person as for the time being appears to the land registrar to be entitled according to law to be so appointed, subject to an appeal to the Divisional Court in the prescribed manner by any person aggrieved by an order of the land registrar under this section. R.S.O. 1970, c. 234, s. 134; 1979, c. 93, s. 51.

Transmission on death of owner of leasehold land or of charge

**122.** On the death of the sole registered owner or of the survivor of several joint registered owners of leasehold land or of a charge, the executor or administrator of such sole deceased owner or of the survivor of such joint owners is entitled to be registered as owner in his place. R.S.O. 1970, c. 234, s. 135.

Entry of representatives of deceased tenant in common

**123.** Where two or more persons holding as tenants in common have been entered as owners of land or a charge and one of them dies, his personal representative, or such other person as is entitled to the share of the deceased, may be entered as owner with the survivor or survivors. R.S.O. 1970, c. 234, s. 136.

Removal of name of deceased joint tenant

**124.** Where one of two or more persons who are registered as the owners of land as joint tenants or as the owners of a charge on a joint account with right of survivorship has died and it appears from the parcel register that the interest of the deceased owner has passed by right of survivorship to the surviving owner or owners, the land registrar may, upon receipt of an application in the prescribed form, delete the name of the deceased owner from the parcel register. 1980, c. 49, s. 12.

Evidence of transmission of registered ownership

**125.** The fact of a person having become entitled to land or a charge in consequence of the death of a registered owner shall be proved in the prescribed manner. R.S.O. 1970, c. 234, s. 138.

**126.** Where land has been transferred to a person beneficially entitled thereto within three years after the death of the registered owner or has become vested in the person beneficially entitled thereto under the *Estates Administration Act*, the land registrar, upon application and the production of satisfactory evidence showing that all debts of the deceased registered owner have been paid and that creditors have been notified, may,

Entry of name of person beneficially entitled as owner without reference to debts

R.S.O. 1980, c. 143

- (a) where the person beneficially entitled is shown on the register as owner of the land and the register shows that the land is subject to the unpaid debts of the deceased registered owner, delete the reference to the unpaid debts from the register; or
- (b) register the person beneficially entitled to the land without reference to the unpaid debts of the deceased registered owner. R.S.O. 1970, c. 234, s. 139; 1979, c. 93, s. 51.

**127.**—(1) Notwithstanding anything in the *Estates Administration Act* or this Act, no executor, administrator, devisee, beneficiary, heir, nor any person interested in freehold or leasehold land or in a charge or interest therein, shall, by reason of the death of a registered owner, co-owner or joint owner of the land, charge or interest, be entered as owner unless the consent in writing of the Minister of Revenue is attached to or endorsed on the application for transmission of interest or application for entry and such entry shall be in respect of only the land, charge or interest mentioned in the application. R.S.O. 1970, c. 234, s. 140 (1); 1977, c. 8, s. 8 (1).

Transfer of interest of deceased owner not to be entered without consent of Minister of Revenue

(2) Notwithstanding subsection (1), the consent of the Minister of Revenue is not required to be attached to or endorsed on the application for transmission of interest or application for entry in respect of any land, charge or interest that is prescribed by the Minister of Revenue by regulations made under *The Succession Duty Act*, being chapter 449 of the Revised Statutes of Ontario, 1970, to be land or a charge or interest that may be conveyed, transferred or assigned without the consent of the Minister of Revenue. 1977, c. 8, s. 8 (2).

Where consent of Minister not required

(3) Subsections (1) and (2) do not apply where the death of the registered owner occurred prior to the 1st day of January, 1970 or after the 10th day of April, 1979. 1979, c. 93, s. 35.

Saving

**128.**—(1) A person claiming to be entitled to freehold or leasehold land, or to an interest therein capable of being regis-

Application of devisees, etc., for registration

tered, or to a charge as devisee, heir, executor or administrator of a person who might have been registered under section 69, or a person claiming through or under such devisee, heir, executor or administrator, may apply to be registered as owner of such land, interest or charge, and, if no conflicting registration has been made, may be so registered subject to section 69 and this section.

Mode of  
entry

(2) On registering the applicant, the land registrar shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter an intermediate transferee, heir, executor or administrator as registered owner where that method is more convenient.

All persons  
entitled must  
apply

(3) No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners. R.S.O. 1970, c. 234, s. 142; 1979, c. 93, s. 51.

#### CAUTION, ETC.

Registration  
of caution

**129.**—(1) A person claiming to have an interest in registered land or in a registered charge of which he is not the registered owner may apply to the land registrar for the registration of a caution to the effect that no dealing with the land or charge be had on the part of the registered owner or other person named in the caution without the consent of the cautioner. R.S.O. 1970, c. 234, s. 143 (1); 1979, c. 93, ss. 36 (1), 51.

Caution  
by  
registered  
owner

(2) Where the registered owner of freehold or leasehold land or of a charge has executed a transfer or a charge of the land or a transfer of the charge but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without the consent of the registered owner, the land registrar may permit the registration of a caution by the registered owner. 1979, c. 93, s. 36 (2).

When no  
caution

(3) A person interested under a lease or agreement for a lease of which notice has been entered on the register, or a person entitled to an estate in dower or by the curtesy of which notice has been entered on the register, is not entitled to register a caution in respect of the lease or agreement or estate in dower or by the curtesy.

Renewal and  
expiration

(4) A caution registered under this section ceases to have effect five years from the date of its registration unless renewed within that time. R.S.O. 1970, c. 234, s. 143 (2, 3).

(5) When a caution ceases to have effect, the land registrar may delete the entry from the register. R.S.O. 1970, c. 234, s. 143 (6); 1979, c. 93, s. 51. Deletion from register

**130.**—(1) After a caution has been registered, the land registrar shall not, without the consent of the cautioner, register any dealing with the land or charge against which the caution is registered. R.S.O. 1970, c. 234, s. 144 (1); 1979, c. 93, s. 51. Caution prevents dealing

(2) The registered owner, or any other person having an interest in land or a charge against which a caution has been registered, may apply to the land registrar at any time for a notice to be served upon the cautioner warning him that his caution may cease to have effect unless the cautioner appears before the land registrar at the time and place mentioned in the notice and satisfies him that the caution should not be deleted from the register. 1979, c. 93, s. 37 (1). Owner may apply for removal of caution

(3) Upon receipt by him of an application under subsection (2), the land registrar shall serve a notice in the prescribed form upon the cautioner. R.S.O. 1970, c. 234, s. 144 (3); 1979, c. 93, s. 51. Service of notice

(4) If the cautioner fails to satisfy the land registrar that the caution should continue, the land registrar may order that the entry of the caution be deleted from the register, and, unless the order is appealed, the land registrar shall delete the entry of the caution from the register and thereupon the caution ceases. 1979, c. 93, s. 37 (2), *part*. Where cautioner fails to satisfy land registrar

(5) The consent of a cautioner is not required where the dealing proposed to be registered is under the authority of a judgment or order of the court in a suit or proceeding to which the cautioner is a party or where such dealing is under a power of sale contained in a charge or mortgage that is prior to the title under which the cautioner claims and the cautioner has been served with a notice of the proposed exercise of the power of sale and the caution is not in respect of the exercise of the power of sale or where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with his caution or where the transferee, chargee or other person desiring the registration of the dealing is willing that the same should be registered subject to the continuance of the caution and the land registrar thinks fit so to register it, and, where a caution is continued, such continuance prevents further registrations of dealings by the registered owner until the consent of the cautioner is obtained, unless as in this section provided. R.S.O. 1970, c. 234, s. 144 (6); 1979, c. 93, ss. 37 (3), 51. When consent of cautioner not required

(6) Where a caution affects part only of the land dealt with by the transfer, charge or other instrument, the land registrar may, Dealing where caution against part of land



upon the application in writing of the person desiring registration or his solicitor, register the instrument as to the land not affected by the caution, and may subsequently, with the consent of the cautioner, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof. 1979, c. 93, s. 37 (4).

Withdrawal  
of caution

(7) A land registrar, upon receiving a withdrawal of caution in the prescribed form, may delete the caution referred to in the withdrawal from the register. 1979, c. 93, s. 37 (5).

Second  
caution

**131.** A second caution by the same cautioner or by any other person in respect of the same matter shall not be registered or have any effect except with the permission of the land registrar, which may be given either upon terms or without terms as he considers proper. R.S.O. 1970, c. 234, s. 147; 1979, c. 93, s. 51.

Caution to  
be supported  
by affidavit

**132.** Every caution shall be supported by an affidavit in the prescribed form, stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as are prescribed. R.S.O. 1970, c. 234, s. 148.

Liability  
where  
caution  
improperly  
registered

**133.** A person who registers a caution without reasonable cause is liable to make to any person who may sustain damage by its registration such compensation as is just, and the compensation shall be deemed to be a debt due from the person who has registered the caution to the person who has sustained damage. R.S.O. 1970, c. 234, s. 149.

Limit of  
effect of  
caution

**134.** A caution does not prejudice the claim or title of any person and has no effect except as in this Act provided. R.S.O. 1970, c. 234, s. 150.

Caution  
based upon  
*lis pendens*

**135—(1)** A certificate of *lis pendens* affecting land shall not be registered, but any party to an action, his solicitor or any person claiming to be interested in the action may register a caution subject to the same conditions as in other cases.

Agreement  
of purchase  
may be  
protected by  
caution

(2) An agreement of purchase and sale or an assignment thereof shall not be registered, but a person claiming an interest in registered land under such an agreement may register a caution subject to the same conditions as in other cases. R.S.O. 1970, c. 234, s. 151.

Sale of  
standing  
timber

**136.—(1)** Where timber standing upon registered land is sold under an agreement in writing, the purchaser, instead of registering a caution, may deposit the agreement with the land registrar, and the land registrar, upon proof of the due execution thereof by the owner, shall register it as an encumbrance on the land by

entering a note on the register referring to the instrument and giving shortly its effect.

(2) When registering the agreement, the purchaser shall by memorandum endorsed thereon or annexed thereto give his address for service. Address for service

(3) The registration of such an agreement may be vacated upon the consent in writing of the purchaser verified by an affidavit of execution. Discharge by consent

(4) The registration of such an agreement may also be vacated if the purchaser fails, for the period of one month from the date of the mailing of the notice provided for in subsection (5), to satisfy the land registrar that he still has rights under the agreement. Discharge by land registrar

(5) Upon proof to his satisfaction that the rights of the purchaser are at an end, the land registrar shall send a notice by registered mail addressed to the purchaser at his address for service, warning him that his agreement will cease to have effect after the expiration of one month from the mailing of the notice unless good cause for its continuance is shown. Notice

(6) At any time after ten years from the expiry date of an agreement or renewal thereof of which notice has been registered under this section, the land registrar may, upon application and without notice to the purchaser, delete from the register the entry of the notice of agreement or of the renewal. R.S.O. 1970, c. 234, s. 152; 1979, c. 93, s. 51. Removal of entry of timber agreement from register ten years after expiry

#### EXECUTIONS

**137.**—(1) A sheriff to whom a writ of execution or renewal thereof is directed shall, upon receiving from or on behalf of the judgment creditor, the prescribed fee and instructions to so do, forthwith deliver to the land registrar of each land titles division wholly or partially within the sheriff's territorial jurisdiction a copy of the writ or renewal, and no registered land is bound by any writ of execution until a copy delivered by the sheriff has been received and recorded by the land registrar. 1980, c. 49, s. 14 (1). Notice of executions

(2) The land registrar shall keep an index or a book in the prescribed form in which shall be entered a record of all writs and renewals, copies of which are received by him from the sheriff or other officer. Record of same

Transfer  
before entry  
void as  
against  
purchaser

(3) No sale or transfer under any such writ is valid as against a person purchasing for valuable consideration before such entry is made, notwithstanding that the purchaser may have had notice of the writ.

Entry of  
satisfaction  
of writ

(4) Upon production to the land registrar of sufficient evidence of the satisfaction of such a writ, he shall cause an entry to be made in the index or book to that effect, and, on such entry, the writ shall be deemed to be satisfied.

When writ  
to be  
presumed  
to be spent

(5) Every writ and renewal of a writ shall be presumed to have been spent and the delivery or transmission of a copy thereof ceases to have effect at the expiration of the writ or renewal as appearing on the copy transmitted, but, if there has been a sufficient commencement of the execution to enable it to be completed by the sale and conveyance of the land under the writ and the writ has not been completely executed, the sheriff or officer shall, or the execution creditor may, at any time within one month before the expiration of the writ or renewal as so appearing, file with the land registrar a certificate of the sheriff or officer stating that fact, and such certificate shall be noted at the entry of the writ in the index or book, and the writ continues in force for a further period of one year from the filing of the certificate when it ceases to have effect unless another similar certificate is filed that operates in like manner.

Notice  
where writ  
against  
owner under  
different  
name from  
that on the  
register

(6) Where an execution or other writ is issued against the registered owner under a different name from that under which he is registered, the writ has no effect under this Act unless the person who sues out the writ, or his solicitor, gives a notice to the land registrar stating the name under which the execution debtor is registered and otherwise in the form or to the effect prescribed or unless a like notice is written upon the copy of the writ.

Where writ  
not binding

(7) Where land is being transferred or charged and where a notice under subsection (6) has not been given, a writ of execution or renewal thereof does not bind the land being transferred or charged as against the transferee or chargee if the land registrar decides that the name of the execution debtor appearing in the writ or renewal thereof and the name of the registered owner as it appears in the records of the land registry office do not represent the same person, and he issues a certificate accordingly. R.S.O. 1970, c. 234, s. 153 (2-7); 1979, c. 93, s. 51, *part*.

No fee under  
R.S.O. 1980,  
c. 146, s. 12

(8) No additional fee is payable to the sheriff or to the land registrar in respect of a certificate under section 12 of the *Execution Act*. R.S.O. 1970, c. 234, s. 153 (9); 1979, c. 93, s. 51, *part*; 1980, c. 49, s. 14 (3).

(9) Notwithstanding subsection 3 (2) of the *Bail Act* and subsection 18 (4) of the *Legal Aid Act*, copies of certificates of liens under either Act may be recorded in the same index or book in which writs are recorded under subsection (2) of this section. 1980, c. 49, s. 14 (3).

Liens for  
bail or  
legal aid  
R.S.O. 1980,  
cc. 36, 234

**138.** Where a person applies for registration of an instrument and claims that a writ apparently affecting land does not affect the land or a charge thereon, he shall produce such evidence thereof as the land registrar considers necessary, and the land registrar may require all parties interested to be notified of the application and may himself decide the question or may direct an issue to be tried or a case to be stated and may make such order as to costs as he considers just. R.S.O. 1970, c. 234, s. 154; 1979, c. 93, s. 51.

Procedure  
when claimed  
writ not  
binding

**139.**—(1) The seizure under execution or other process of a mortgage or charge or of leasehold land registered under this Act does not take effect until a certificate of the sheriff or other officer that he has taken the mortgage, charge or leasehold land under such process against the registered owner thereof is lodged with the land registrar.

Seizure  
ineffectual  
until  
certificate  
by sheriff

(2) The certificate shall state the number of the parcel under which the land affected is registered and the name of the owner and shall be entered by the land registrar in the register.

Contents of  
certificate

(3) This section does not apply where the proceedings prescribed by section 21 of the *Execution Act* have been taken with respect to a mortgage or charge. R.S.O. 1970, c. 234, s. 155; 1979, c. 93, s. 51.

Application  
of section  
R.S.O. 1980,  
c. 146

#### TRUSTEE ACT, APPLICABILITY

**140.** All the provisions of the *Trustee Act* that are not inconsistent with the provisions of this Act apply to land and charges registered under this Act, but this enactment does not prejudice the applicability to such land and charges of any provisions of that Act relating to land or choses in action. R.S.O. 1970, c. 234, s. 158.

How far  
R.S.O. 1980,  
c. 512,  
to apply

### PART VIII

#### DESCRIPTIONS OF LAND AND REGISTERED PLANS

**141.**—(1) Registered land shall be described in such manner as the land registrar considers is best calculated to secure accuracy.

How land  
to be  
described

(2) The description of registered land is not conclusive as to the boundaries or extent of the land. R.S.O. 1970, c. 234, s. 159; 1979, c. 93, s. 51.

Description  
not  
conclusive

Alteration of  
registered  
description  
of land

**142.** No alteration shall be made in the registered description of land, except under an order of the court or under subsection 60 (12), subsection 144 (7) or section 157 or 160 or by way of explanation, but this section does not extend to registered dealings with registered land in separate parcels, although the land was originally registered as one parcel. R.S.O. 1970, c. 234, s. 160; 1972, c. 132, s. 29.

Compulsory  
registration  
R.S.O. 1980,  
c. 84

**143.**—(1) Except as provided by subsection (2), where land described in a description as defined in the *Condominium Act* or shown on a plan of subdivision is situate in a land titles division, the description along with the appropriate declaration or the plan of subdivision, as the case may be, shall be registered under this Act.

Exception  
to subs. (1)  
R.S.O. 1980,  
c. 445

(2) A plan of subdivision may be registered under the *Registry Act* where,

- (a) the plan is presented and accepted for registration within six months after the operation of this Act was extended to the area in which the land is situate;
- (b) the registration under this Act of the land included in the plan would, in the opinion of the Director of Titles, result in an unreasonable delay in the registration of the plan; or
- (c) a regulation made under subsection (3) applies to the land shown on the plan.

Exception  
by regulation

(3) The Lieutenant Governor in Council may make regulations designating such land titles divisions, or parts thereof, as are specified in the regulations as areas within which subsection (1) does not apply and such designation may be limited to a specified period or may expire on a specified date. 1979, c. 93, s. 40.

Plans to  
conform to  
regulations

**144.**—(1) Every plan submitted for registration or for deposit shall be prepared in accordance with the regulations. R.S.O. 1970, c. 234, s. 161 (1).

Subdivision  
plans to be  
registered

(2) Where land is being subdivided for the purpose of being sold or conveyed in lots, the person making the subdivision shall register in the proper land titles office a plan of the land prepared by an Ontario land surveyor. R.S.O. 1970, c. 234, s. 161 (2); 1979, c. 93, s. 41 (1).

Signature to  
be affixed  
to plan

(3) The person by whom or on whose behalf a plan is registered shall sign the plan. R.S.O. 1970, c. 234, s. 161 (3); 1979, c. 93, s. 41 (2).

(4) The land registrar, before accepting a plan for registration, may require evidence to be given him explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register, or he may require evidence to be given him respecting any other matter of which he requires explanation. Additional information

(5) Before a plan, other than a plan of public lands prepared under the *Public Lands Act* or as otherwise excluded by the regulations, is registered or deposited in a land registry office for a land titles division the Director of Titles may require a survey thereof to be verified on the ground by the examiner of surveys or by such other person as is designated by the Director of Titles. Verification of survey  
R.S.O. 1980,  
c. 413

(6) The Director of Titles may direct that a true copy of a plan or a part of a plan registered or deposited in a land registry office for a land titles division be made under the direction of the examiner of surveys, who shall certify thereon that it is a true copy of the plan or of a part of a plan, as the case may be, and the copy so made and certified has all the force and effect of the plan or of that part of the plan of which it is a copy. R.S.O. 1970, c. 234, s. 161 (7-9); 1979, c. 93, s. 51, *part*. True copy  
of plan

(7) An error, defect or omission in a registered or deposited plan may be corrected in accordance with the regulations. 1980, c. 49, s. 15. Correction  
of plan

**145.** Section 82 of the *Registry Act* applies with necessary modifications to land registered under this Act. R.S.O. 1970, c. 234, s. 163. Application of  
R.S.O. 1980,  
c. 445, s. 82

**146.**—(1) Where land has been or is granted by the Crown under the *Public Lands Act* and a plan of subdivision of the land has not been registered, an application on behalf of the Minister of Natural Resources may be made to the land registrar to register a composite plan showing the land, and the boundaries of the lots or blocks shown thereon shall be deemed to be the true boundaries of the lots or blocks. R.S.O. 1970, c. 234, s. 164 (1); 1972, c. 4, s. 12; 1979, c. 93, s. 51. Composite plan

(2) Every composite plan shall conform as nearly as may be to a plan of subdivision under section 144 except that it shall be signed by the Surveyor General or his deputy on behalf of all persons having an interest in the land shown thereon. R.S.O. 1970, c. 234, s. 164 (2). Idem

(3) A subsequent severance from land shown on a plan registered under subsection (1) may be delineated by an Ontario land surveyor upon a duplicate of the plan so registered. 1979, c. 93, s. 43. Subsequent  
severance

## Index Plan

**147.** A land registrar may prepare an Index Plan to illustrate and redesignate separately described parcels of land and the Index Plan may be registered with the approval of the Director of Titles and the parcels shall thereafter be described in accordance with the Index Plan. R.S.O. 1970, c. 234, s. 165; 1979, c. 93, s. 51.

## Survey of township subsequent to grant from Crown

**148.**—(1) Where land in an unsurveyed township in a provisional judicial district has been or is granted by the Crown and the land is subsequently surveyed and laid out into lots and concessions in whole or in part, the survey shall be made in accordance with the provisions of the *Surveys Act* as made applicable by the terms of the patent or order in council granting the land, and the plan of survey shall be registered in the proper land registry office.

R.S.O. 1980, c. 493

## Requirements as to plan

(2) Such plan shall be prepared as nearly as may be in accordance with section 144. R.S.O. 1970, c. 234, s. 166.

## Reference plan required in certain cases

**149.**—(1) A transfer or charge of freehold or leasehold land shall not be registered unless a plan of the land prepared by an Ontario land surveyor, to be known as a reference plan, has been deposited for record in the land registry office. 1979, c. 93, s. 44, *part*.

## Saving

(2) Subsection (1) does not apply to a transfer or charge,

- (a) of the whole of a registered parcel of land according to the parcel register;
- (b) of the whole of a lot, block, street, lane, reserve or common according to a registered plan of subdivision or composite plan; or
- (c) of the whole of a part according to a previously recorded reference plan of survey.

## Idem

(3) The land registrar, having regard to the circumstances, may order that subsection (1) does not apply in the case of a transfer or charge mentioned in the order. R.S.O. 1970, c. 234, s. 167 (2, 3); 1979, c. 93, s. 51.

## Boundaries

(4) New boundaries that are created by a severance shown on a reference plan and referred to or incorporated by reference in a registered instrument signed by the registered owner of the land shall be deemed to be true and unalterable boundaries and to be defined by the monuments shown thereon, but such monuments do not change or alter the position of any previously established boundary or prejudice prior registered rights or interests. R.S.O. 1970, c. 234, s. 167 (5).

## Plan of street, road, lane, or common

**150.**—(1) Where a plan of subdivision lays out a part of the land as a street, road, lane or common, it shall not be registered

except on the application of the owner of the land subdivided with the consent in writing of all persons who are registered as mortgagees or chargees thereof. R.S.O. 1970, c. 234, s. 168.

(2) The consent of a chargee to a plan of subdivision, when registered, discharges from the charge any land dedicated by the owner as a public highway and any land designated as a reserve that is transferred to the corporation of the municipality in which the land is situate. 1972, c. 132, s. 31. Effect of chargee's consent

(3) Land dedicated by its owner for a street or public highway is not subject to any claim under Part III of the *Family Law Reform Act* by the spouse of the person by whom it was dedicated. 1980, c. 49, s. 16. Claim under R.S.O. 1980, c. 152

**151.**—(1) Where a street, road or lane laid out on a plan registered in a land registry office has become a public highway and has thereby become vested in a municipal corporation, the municipal corporation may apply to the land registrar to be entered as the owner thereof. Entry on register of municipal corporation as owner of streets laid out on plan

(2) Where a highway or part of it has been closed by the action of a municipal council and the highway or part of it has been transferred by the municipal corporation without the municipal corporation having been entered as owner of it, the transferee may apply to be entered as owner of the highway or part of it transferred to him and, upon due proof of the facts, the land registrar may enter such transferee as owner. R.S.O. 1970, c. 234, s. 169; 1979, c. 93, s. 51. Entry as owner of transferee from a municipal corporation of closed-up highway

**152.**—(1) No plan of survey or subdivision to which the *Planning Act* applies shall be registered unless approved under that Act. R.S.O. 1970, c. 234, s. 171 (1). Where R.S.O. 1980, c. 379 applies

(2) Composite plans registered under section 146 are not subject to the provisions of the *Planning Act* with respect to approval thereof. R.S.O. 1970, c. 234, s. 171 (2); 1972, c. 132, s. 32. Where R.S.O. 1980, c. 379 does not apply

**153.** A registered plan shall not be amended except under subsection 144 (7) or under section 145. 1972, c. 132, s. 33, *part*. Amendment of plan

## PART IX

### FRAUD

**154.** Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land that, if unregistered, would be fraudulent and void is, notwithstanding registration, fraudulent and void in like manner. R.S.O. 1970, c. 234, s. 174. Fraudulent dispositions



Certain  
fraudulent  
acts declared  
to be  
offences

**155.** Every person who fraudulently procures, attempts to fraudulently procure or is privy to the fraudulent procurement of an entry on the register or of an erasure from the register or alteration of the register is guilty of an offence under this Act and on conviction is liable to imprisonment for a term of not more than two years, with or without hard labour, or to be fined such sum not exceeding \$1,000 as the court before which he is tried adjudges, and the entry, erasure or alteration is void as between all parties or privies to the fraud. R.S.O. 1970, c. 234, s. 175.

Cancellation  
of fraudulent  
entries

**156.**—(1) Upon the conviction under this Act or under the criminal law of Canada of a person for an offence whereby he fraudulently procured an entry on the register by reason of which any person other than the rightful owner has become the registered owner of land, or by reason of which land under this Act has been wrongfully encumbered, the land registrar, on the application of the rightful owner, may cancel the wrongful entry and may enter the rightful owner as the registered owner of the land.

Where land  
has been  
transferred  
to innocent  
holder

(2) If while the wrongful entry was subsisting on the register an innocent person has been registered as the owner of a charge upon or an estate, right or interest in the land, the land registrar, instead of cancelling the wrongful entry, may make an entry on the register stating the fact of the conviction and revesting the land in the rightful owner subject to the charge, estate, right or interest, and the land thereupon vests in the person named in the last-mentioned entry in accordance with its terms.

Application  
of section

(3) This section applies to past as well as future cases. R.S.O. 1970, c. 234, s. 176; 1979, c. 93, s. 51.

## PART X

### RECTIFICATION OF THE REGISTER

Entry of  
caution by  
land registrar  
in case of error

**157.**—(1) The land registrar may of his own accord and without affidavit enter a caution to prevent the dealing with registered land if it appears to him that an error has been made in an entry by misdescription of the land or otherwise.

Correction  
of errors

(2) Subject to the regulations, the land registrar, before the receipt of any conflicting instruments or after notifying all persons interested, upon such evidence as appears to him sufficient, may correct errors and supply omissions in certificates of ownership or of charge, or in the register, or in an entry therein, and may call in any outstanding certificate for that purpose. R.S.O. 1970, c. 234, s. 177 (1, 2); 1979, c. 93, s. 51.

(3) Where the land registrar restores to the register any covenant or condition, he may do so with such modifications as he considers advisable so as to do the least possible injury to any person affected by its omission or restoration, and, upon notice to the Minister, at the same time or subsequently, may determine what damages, if any, shall be paid to any person claiming to have been injuriously affected by the omission or restoration of the covenant or condition. R.S.O. 1970, c. 234, s. 177 (3); 1972, c. 1, s. 43 (2); 1979, c. 93, s. 51.

Restoration of covenants or conditions and compensation therefor

**158.** Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just. R.S.O. 1970, c. 234, s. 178.

Court may order rectification

**159.** Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the register. R.S.O. 1970, c. 234, s. 179.

Application to court to rectify

**160.** Where land has been registered under this Act and the Minister of Natural Resources under the *Public Lands Act* directs an incorrect patent to be cancelled and a correct patent to be issued in its stead, the land registrar, upon receipt of the correct patent, if no conflicting instrument has been received, shall amend the entry on the register to accord with the correct patent or, where a conflicting instrument has been received, the land registrar, after notifying all persons interested, may make such amendment. R.S.O. 1970, c. 234, s. 180; 1972, c. 4, s. 12; 1979, c. 93, s. 51.

Correction of errors in patents after registration  
R.S.O. 1980, c. 413

**161.—(1)** Upon receiving a certificate of the Minister of Natural Resources or the Deputy Minister of Natural Resources,

Deletion from register of reservations, etc., in letters patent

- (a) that a reservation of any class or kind of tree in letters patent to registered land is void;
- (b) that a reservation of mines or minerals in letters patent to registered land issued before the 6th day of May, 1913, is void; or
- (c) that a condition, proviso or reservation in letters patent to registered land, other than a reservation of any class or kind of tree or of mines or minerals is void,

the land registrar shall delete the reservation, condition or proviso from the register without application therefor. 1972, c. 1, s. 43 (5); 1979, c. 93, s. 51.

Transfer,  
charge, etc.,  
of mines and  
minerals  
reserved

(2) Where an owner or former owner has attempted to transfer, charge or otherwise convey any mines or minerals reserved in letters patent to registered land issued before the 6th day of May, 1913, upon receiving a certificate of the Minister of Natural Resources or Deputy Minister of Natural Resources that the reservation in the letters patent is void by statute, the land registrar shall make all proper entries to define the interests of those appearing to be entitled to the mines or minerals. R.S.O. 1970, c. 234, s. 181 (4); 1972, c. 4, s. 12; 1979, c. 93, s. 51.

Claims  
against  
Assurance  
Fund

(3) No claim shall be sustained against the Assurance Fund respecting any right arising from any conveyance of mines or minerals reserved in letters patent issued before the 6th day of May, 1913. R.S.O. 1970, c. 234, s. 181 (5).

## PART XI

### REGULATIONS AND PROCEDURE

Power to  
make rules

**162.**—(1) The Lieutenant Governor in Council may make regulations in respect of,

- (a) the mode in which the register is to be made and kept;
- (b) a code of standards and procedure for surveys and plans of registered land;
- (c) the mode in which any special register is to be made and kept;
- (d) the hours during which the land registry offices shall be kept open and the hours during which instruments shall be received for registration;
- (e) the forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings or in connection with the registration, and requiring any information in connection with any form, evidence or procedure to be verified by affidavit or declaration;
- (f) the custody, disposition and destruction of instruments and records of land registry offices;
- (g) the functions of land registrars relating to the first registration of land under this Act, and specifying which of

the functions shall be performed by the Director of Titles;

(h) the duties that are to be performed by the Director of Titles, the land registrar and other officers, and the duties of the Director of Titles and of the land registrars that may be performed by other officers;

(i) the costs to be charged by solicitors in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying out this Act, with power to require such costs to be payable by commission, percentage or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as is expedient;

(j) the fees to be paid under this Act, and regard may be had,

(i) in the case of the registration of land or of any transfer of land on the occasion of a sale, to the value of the land as determined by the amount of purchase money, or to the value of it to be ascertained in such manner as is prescribed,

(ii) in the case of registration of a charge or of a transfer of a charge, to the amount of the charge;

(k) the taxation of costs and the persons by whom the costs are to be paid;

(l) any matter by this Act directed or authorized to be prescribed;

(m) any other matter or thing, whether similar or not to those above mentioned, in respect of which it is considered expedient to make rules for the purpose of carrying out this Act. R.S.O. 1970, c. 234, s. 182; 1972, c. 1, s. 43 (6); 1979, c. 93, ss. 47 (1-3), 51.

(2) The application of any provision of the regulations made under subsection (1) may be limited to one or more land titles divisions. 1979, c. 93, s. 47 (4). Application of regulations

**163.** The provisions of this Act respecting the procedures and records in land registry offices for land titles divisions are subject to any regulation made under section 97 of the *Registry Act*. R.S.O. 1970, c. 234, s. 183. Integration of land titles and registry records and procedures  
R.S.O. 1980, c. 445

Custody of  
registered  
documents, etc.

**164.**—(1) Every registered instrument and deposited or registered plan is the property of the Crown and, except as otherwise provided in the regulations, shall be retained in the custody of the land registrar in his office. 1979, c. 93, s. 48 (1).

Production  
of instru-  
ments, etc.,  
copies

(2) Upon receipt of a request in writing and the prescribed fees, the land registrar,

(a) shall produce for inspection in his office during office hours any instrument retained in his office or any book of the office relating to such instrument; and

(b) shall supply a copy of the whole or a part of any instrument registered in his office and, when so requested, shall certify the copy under his hand and seal of office. R.S.O. 1970, c. 234, s. 184 (2); 1979, c. 93, ss. 48 (2), 51.

Penalty for  
altering or  
removing  
records

**165.**—(1) Any person, except the land registrar or other officer when entitled by law so to do, who alters any book, record, plan or registered instrument in any land registry office for a land titles division, or who makes any memorandum, word or figure in writing thereon, whether in pencil or in ink, or by any other means or in any way adds to or takes from the contents of such book, record, plan or instrument, and any person who removes or attempts to remove any such book, record, plan or instrument from such office without lawful authority, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 1972, c. 132, s. 36; 1979, c. 93, ss. 49 (1), 51.

When  
limitation  
period  
starts to  
run

(2) For the purpose of determining the last day to prosecute, the limitation period in respect of an offence under subsection (1) shall start at the time that offence is first discovered by the land registrar. 1979, c. 93, s. 49 (2).

Address for  
service to be  
endorsed on  
certain  
instruments

**166.**—(1) A land registrar shall not register,

(a) a transfer;

(b) a notice of an agreement of purchase and sale of land or an assignment thereof;

(c) a notice of an option for the purchase of land or an assignment thereof;

(d) a charge or a transfer thereof;

(e) a notice of a lease, a sublease, an agreement to lease, an option to lease, an assignment of the lessor's interest in a lease or any assignment thereof;

- (f) a claim for a mechanic's lien or an assignment thereof;
- (g) a notice of security interest under the *Personal Property Security Act* or an assignment thereof; R.S.O. 1980, c. 375
- (h) a certificate of judgment or a final order of foreclosure of a mortgage;
- (i) a vesting order;
- (j) a notice of lien under section 32 of the *Condominium Act*; R.S.O. 1980, c. 84
- (k) an application to be registered as owner of land or of a charge; or
- (l) a caution,

unless there is endorsed on the instrument the address for service of each person obtaining or claiming an interest in or in respect of land under the instrument.

(2) An address for service provided under this section may be changed by registering a notice in the prescribed form. 1979, c. 93, s. 50, *part*. Idem

(3) The envelope containing a notice under this Act shall have printed thereon the return address of the land registry office. Return address

(4) On the return of an envelope containing a notice, the land registrar shall act in the matter requiring the notice to be given in the manner prescribed. R.S.O. 1970, c. 234, s. 185 (4, 5); 1979, c. 93, s. 51. Land registrar to act on return of notice

**167.** No application, order, affidavit, certificate, registration or other proceeding is invalid by reason of any mistake not affecting the substantial justice of the proceeding. R.S.O. 1970, c. 234, s. 186. Proceedings not void for want of form

**168.—(1)** An applicant under this Act is liable *prima facie* to pay all costs, charges and expenses incurred by or in consequence of his application, except where parties whose rights are sufficiently secured without their appearance object or where any costs, charges or expenses are incurred unnecessarily or improperly. Payment of costs

(2) The land registrar may order costs, either as between party and party or as between solicitor and client, to be paid by or to any person who is a party to a proceeding under this Act, and may give directions as to the fund out of which the costs shall be paid, regard being had to subsection (1). Scale of costs

Appeal from  
land registrar's  
order

(3) Any person aggrieved by an order of the land registrar made under this section may appeal to the Divisional Court, which may annul or, with or without modification, confirm the order.

Enforcement  
of order

(4) If a person disobeys an order of the land registrar made under this section, the land registrar may certify the disobedience to the court, and thereupon, subject to the right of appeal, the order may be enforced in the like manner and by the like proceedings as if it were an order of the court.

Costs of  
application  
by trustee,  
etc.

(5) The amount of all costs, charges and expenses properly incurred by a trustee, mortgagee or other person having a power of selling land of and incidental to an application to be registered shall be ascertained and declared by the land registrar, and shall be deemed to be costs, charges and expenses properly incurred by that person in the execution of the trust or in pursuance of the power, and he may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he is not liable to an account in respect thereof. R.S.O. 1970, c. 234, s. 187; 1979, c. 93, s. 51.

Application  
to withdraw  
registered  
land

**169.—**(1) Where after land has been registered special circumstances appear or subsequently arise that make it inexpedient that the land should continue under this Act, the owner may apply in the prescribed manner to the land registrar for the withdrawal of the land from the Act.

Certificate  
by land  
registrar

(2) If the owner proves before the land registrar that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the land registrar that special circumstances exist that render the withdrawal of the land or a part thereof expedient, the land registrar may issue a certificate describing the land or such part thereof as the consent covers and as the land registrar considers proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued this Act ceases to apply to the land described therein, and the land thereafter is subject to the ordinary laws relating to real estate and to the *Registry Act*.

R.S.O. 1980,  
c. 445

Certificate  
to be  
counter-  
signed by  
Director

(3) The certificate of the land registrar under this section is not valid unless approved and countersigned by the Director of Titles. R.S.O. 1970, c. 234, s. 188 (1-3); 1979, c. 93, s. 51.

Application  
of section

(4) This section does not apply to land registered under section 33. R.S.O. 1970, c. 234, s. 188 (5).